

## **PREMIER SOFTWARE - TERMS & CONDITIONS**

### **BACKGROUND**

- (A) The Supplier will supply and licence the Software (defined below) to the Customer under the terms of the Licence (defined below) and agrees to provide support and maintenance for such Software on the terms set out in this agreement.
- (B) The Supplier is the entire legal and beneficial owner and licensor of the Software and is willing to license the Customer to use these products.

### **1 DEFINITIONS**

In this agreement unless inconsistent with the context or otherwise specified the following definitions will apply:

**“Deliverables”** any Documentation, Software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Services.

**“Documentation”** means the operating manuals, user instructions and other related materials supplied by the Supplier to the Customer (whether physically or by electronic means) for aiding the use of the Software, including any part of or copy of them.

**“Hosting Service”** the hosting of the Software provided by a Third Party Supplier, which is available to the Customer.

**“Installation Date”** means the date on which the Software is installed on the Customer’s system as set out in the Order.

**“Licence”** means the licence granted by the Supplier to the Customer to make use of the Software as set out in clause 2.

**“Licence Fee”** means the fee payable by the Customer to the Supplier for the use of the Software as more particularly set out in the Order.

**“Modification”** means any Release or Upgrade which is acquired by the Customer.

**“Non-Critical Fault”** means any reproducible fault in the Software which does not substantially hinder or prevent the Customer from using a material part of the functionality of the software in question.

**“Payment Gateway”** the payment gateway provided by a Third Party Supplier for use with the Software to enable the Customer to take card payments from its own customers.

**“Premier Support Hours”** means 8.30 am to 8.30 pm Monday to Sunday and any such additional hours as agreed between the parties, but excluding Christmas Day, Boxing Day, New Years’ Day and any other days off that the Supplier generally gives to its staff from time to time.

**“Release”** means a release of the Software which corrects faults, adds functionality or otherwise amends or updates the Software, but which does not constitute an Upgrade.

**“Services”** means (as appropriate) the Standard Support Servicethe Updating Service, the Hosting Service (if applicable), the Payment Gateway (if applicable).

**“Software”** means the computer programs in object code form only, as briefly described in the Order including any copies of it or them but excluding source code material or preparatory design material.

**“Standard Support Hours”** means 9.00 am to 5.30 pm Monday to Saturday (GMT), except on days which are bank holidays in England and any other days that the Supplier generally gives to its staff from time to time.

**“Standard Support Service”** means the support service provided by the Supplier to the Customer as described in Clause 4.1 and Clause 4.2.

**“Upgrade”** means any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

**“Updating Service”** means an update to the service supplied by the Supplier to the Customer under clause 4.1 and clause 4.3.

## **2. LICENCE**

- 2.1 The Supplier shall grant the Customer access to the software electronically within 60 days of signature of this agreement.
- 2.2 In consideration of the Licence Fee paid by the Customer to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Customer a non-exclusive perpetual licence to use the Software under the terms of this clause 2, which shall govern the use of the Licence for its duration.
- 2.3 In relation to scope of use:
  - 2.3.1 for the purposes of clause 2.2, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer);
  - 2.3.2 for the purposes of clause 2.2, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed;
  - 2.3.3 the Customer may not use the Software other than as specified in clauses 2.2 and 2.3 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier;
  - 2.3.4 the Customer may make backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying; and
  - 2.3.5 except as expressly stated in this clause 2, the Customer has no right (and shall not permit any third party) to copy, reverse engineer, decompile,

disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.

2.4 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 2.3.5 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

2.5 The Customer shall not:

2.5.1 sub-licence, assign or novate the benefit or burden of the Licence in whole or in part;

2.5.2 allow the Software to become the subject of any charge, lien or encumbrance; and

2.5.3 deal in any other manner with any or all of its rights and obligations under this agreement, without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

2.6 The Customer shall:

2.6.1 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;

2.6.2 notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person; and

2.6.3 pay, for broadening the scope of the licences granted under the Licence to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate referred to in the Master Services Agreement from such date to the date of payment.

2.6.4 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with the Licence, for the purposes of ensuring that the Customer is complying with the terms

of the Licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

### **3. SUPPORTED SOFTWARE**

3.1 The Supported Software is:

3.1.1 the Software;

3.1.2 any Modification which is acquired by the Customer (whether under the Licence, this agreement or any other agreement between the Supplier and the Customer) during the course of this agreement and which accordingly becomes part of the Software; and

3.1.3 any other software which the Supplier and Customer agree should be Supported Software for the purposes of this agreement including the software listed in Order

3.2 In relation to Releases:

3.2.1 as part of the Updating Service, the Supplier shall from time to time make Releases available to the Customer without charge; and

3.2.2 if the Customer fails to acquire and install a Release within 6 months of the Supplier's notifying the Customer that such Release is available for installation, the Supplier may terminate this agreement by giving 1 month's written notice to the Customer.

3.3 The Customer acknowledges that owing to changes and advances in technology, Upgrades or Releases of the Software may in the future not always be compatible with any of the environments present at the date of installation. The Supplier will endeavour to provide the Customer with as much advance notice as it reasonably can, should the Supplier be aware that Upgrades or Releases of the Software will require changes to an agreed environment. It is the Customer's responsibility to upgrade the environments, as advised by the Supplier with reasonable notice, in order to meet the requirements of Upgrades or Releases.

### **4. THE SERVICES**

4.1 The Supplier shall supply, and the Customer shall take and pay for, the following Services:

4.1.1 the Standard Support Service;

4.1.2 the Updating Service

4.1.4 (if applicable) the Payment Gateway; and

4.1.5 (if applicable) the Hosting Service.

4.2 In relation to the Standard Support Service:

4.2.1 the 4.2.1 The Standard Support Service shall be provided during the Standard Support Hours 9am - 5pm and shall comprise of a help desk to

provide first-line technical support to users of the Supported Software regarding day to day enquiries in respect of understanding and operation of the Software to the extent that these are not covered in the Documentation.

4.2.2 If additional support is requested or required by the Customer in any month it may be provided by the Supplier at its option at such cost as is agreed between the Supplier and the Customer; and

4.2.3 Where a Non-Critical Fault is to be corrected in a forthcoming Release, then for a reasonable period before the issue of such Release the Supplier may decline to provide assistance in respect of that Non-Critical Fault.

4.3 In relation to the Updating Service:

4.3.1 the Supplier shall issue Modifications of the Software as and when required and in whatever form (including, in the case of Non-critical Faults, by way of a local fix or patch of the Software or a temporary by-pass solution) in the absolute discretion of the Supplier;

4.3.2 the Updating Service shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect any Modification acquired by the Customer;

4.3.3 for the avoidance of doubt, the cost of the Updating Service is included in the Charges payable for the Standard Support Service as set out in the Order, but excludes any sum payable by the Customer in respect of delivery and/or installation of the Modifications; and

4.3.4 once any Modification has been installed by the Customer, the Customer shall return all copies of the Software or any part of the Software which is superseded by that Modification.

4.4. In relation to the Hosting Service (if applicable) and/or the Payment Gateway (if applicable):

4.4.1 The Supplier shall provide the Hosting Service and/or the Payment Gateway through a Third Party Supplier;

4.4.2 The Customer shall have the option to make use of the Hosting Service, which shall involve the hosting of the Software on external servers;

4.4.3 The Customer shall have the option to make use of the Payment Gateway, which shall involve access to third party servers to enable the Customer to take card payments from its own customers;

4.4.4 The Supplier shall not be liable for the loss of any of the Customer's data through use of the Hosting Service and/or the Payment Gateway; and

4.4.5 The Supplier makes no warranties or representations that the Hosting Service and/or the Payment Gateway will be uninterrupted or error-free.

4.4.6 Where the Hosting Service is terminated the Customer shall be responsible for any costs associated with the local installation of the Software.

- 4.5 The Supplier may, on prior notice to the Customer, make changes to the Services, provided such changes do not have a material adverse effect on the Customer's business operations.
- 4.6 The Supplier shall have no obligation to provide the Services where faults arise from:
  - 4.6.1 misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;
  - 4.6.2 failure to maintain the necessary environmental conditions for use of the Software;
  - 4.6.3 use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
  - 4.6.4 relocation or installation of the Software by any person other than the Supplier or a person acting under the Supplier's instructions;
  - 4.6.5 any breach of the Customer's obligations under this agreement howsoever arising or having the Software maintained by a third party;
  - 4.6.6 any Modification not authorised by the Supplier; or
  - 4.6.7 operator error.
- 4.8 The Supplier may at its discretion and by giving not less than 3 months' written notice to the Customer:
  - 4.8.1 withdraw any of the Services where the Supplier in its reasonable opinion deems the Software to be obsolete or at end of life; or
  - 4.8.2 withdraw any of the Services for Upgrades or Releases which in the Supplier's reasonable opinion are no longer in wide commercial use.

## 5. **CHARGES**

- 5.1 Subject to clause 2, the Customer shall pay to the Supplier the Licence Fee.
- 5.2 In consideration of the Services, the Customer shall pay the Charges set out in The Order. These Charges shall be paid either:
  - 5.2.1 monthly in advance by the Customer to the Supplier
  - 5.2.2 annually in advance by the Customer to the Supplier on or around the last day of the calendar month in which each anniversary of the Installation Date falls.
- 5.3 Charges for any Upgrade to the Customer shall be agreed in writing before performance or supply by the Supplier, and shall be charged and invoiced to the Customer by the Supplier (and paid by the Customer) following acceptance by the Supplier of the Customer's written order for such Upgrade.

## **6. THE CUSTOMER'S RESPONSIBILITIES**

- 6.1 The Customer shall provide the Supplier and all other persons duly authorised by the Supplier with full, safe and uninterrupted access including remote access to the Customer's premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by the Supplier's staff and take reasonable care to ensure their health and safety.
- 6.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.
- 6.3 The Customer shall:
- 6.3.1 co-operate with the Supplier in performing the Services and provide any assistance, materials or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
  - 6.3.2 report faults promptly to the Supplier; and
- 6.4 The Supplier shall not be liable for any failure to provide or any delay or error in providing any part of the Services resulting from the Customer's failure to comply with this clause 7.
- 6.5 Notwithstanding clause 7.4, the Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

## **7. RISK AND TITLE**

Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by the Supplier to the Customer shall pass to the

### **THE SUPPLIER'S WARRANTIES**

- 7.1 If the Customer notifies the Supplier in writing of any defect or fault in the Software and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of the Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do either of the following:
- 7.1.1 repair the Software; or
  - 7.1.2 replace the Software,

provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

- 7.2 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.
- 7.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 7.4 The Supplier represents and warrants to the Customer that:
  - 7.4.1 the Services will be performed:
    - (a) in accordance with all applicable laws and regulations; and
    - (b) with all reasonable skill and care;
  - 7.4.2 to the best of its knowledge and belief, the Deliverables will not infringe the UK Intellectual Property Rights of any third party; and
  - 7.4.3 at the date of this agreement, the Supplier has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for the Supplier to perform the Services.
- 7.5 If, during the term of this agreement, the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in clause 12.4.1, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this clause 12.5. This clause sets out the Customer's sole remedy and the Supplier's entire liability for breach of clause 12.4.1.
- 7.6 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.
- 7.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

## **8. RESPONSIBILITIES OF THE SERVICE PROVIDER**

- 8.1 Service Provision: The Service Provider will diligently provide the agreed-upon services, maintain the system's performance, and provide technical support as specified in the service agreement.
- 8.2 Data Integrity: The Service Provider will take reasonable measures to ensure the integrity and accuracy of Customer data stored within the system.