

J. & E. Computers Limited T/A
Brighouse Computer Centre
Terms and Conditions

1. Parties

- a) J. & E. Computers Limited trading as Brighouse Computer Centre of 3 Owlerings Road, Brighouse, HD6 1EJ (the "Supplier").
- b) The company or organisation entering to the contract for services supplied by the supplier (the "Customer").

2. Definitions

As used in this Agreement, and insofar as they remain applicable, the following terms have the meanings specified below:

"Agreement" means these Terms and Conditions and any accompanying Schedule(s) or written order form agreed between the Supplier and the Customer;

"Availability" means the availability of the Customer's Server or Web Site demonstrated by means of either a ping or trace route program;

"Business Day" any day which is not a Saturday, Sunday or public holiday in England and Wales;

"Confidential Information" means all material, non-public, business-related information, written or oral, whether or not it is marked as such, that is disclosed or made available to the receiving party, directly or indirectly, through any means of communication or observation.

"Customer Data" the data inputted by the Customer; The customer will at all times retain ownership of the data

"Customer" the customer identified in the order form or on the commencing invoices;

“Downtime” in respect of any month the total time during which the IT Services are not available (other than as a result of Planned Outages);

“Charge(s)” the charges payable to the Supplier by the Customer, as described in the order form or accompanying invoice;

“Hosting Services” the hosting services to be provided by the Supplier.

“Hardware” any equipment belonging to or used by the customer or any of its associates in relation to the performance of its business as detailed in an inventory of equipment. This inventory may be changed, added to or reduced provided the customer notifies the supplier, and the supplier agrees, before inclusion on the inventory. Agreement to a change to the inventory would not normally be withheld unless it made a substantial difference to the level of service provided.

“Initial Period” the initial period of the Agreement being 12 months.

“Maintenance and Support” any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Services, as well as any other support or training services provided to the Customer under this Agreement.

“Normal Business Hours” 8.00 am to 4.30 pm, each Business Day;

“Performance Dates” agreed dates by which the Supplier will endeavor to complete a set task or piece of work. These shall be estimates only and time shall not be of the essence in relation to these, or at all.

“Planned Outage” any period during which any user cannot process an application transaction or send or receive e-mails utilising the Service caused by work for the purpose of maintenance or support;

“Services” the Set-up Services, Hosting Services and Maintenance and Support as applicable,

given the context in which the term Services is used;

“Set-up Services” the work to be performed by the Supplier prior to commencement of the first invoice, unless otherwise agreed.

“Third party” any company, real or fictitious, individual or group of individuals outside the customer’s organisation or the supplier’s organisation.

“Virus” anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of or reliability of any programme or data, or adversely affect the user experience, including worms, Trojan horses, viruses.

3. Services, Maintenance and Support

- a) The Supplier shall perform the Services and Maintenance and Support with reasonable skill and care.
- b) The Service Level Arrangements shall apply with effect from the start of the month after the Set-up Services have been satisfactorily completed.
- c) Changes to the hardware listed on the Customer’s inventory, if a remote support agreement is in place, shall be agreed between the supplier and the Customer, it is understood by the supplier in the fast changing world of IT new equipment is part of everyday life and small changes will be covered by the service agreement. If substantial changes to the agreed inventory are proposed this must be agreed between the Customer and the Supplier before the additional hardware is added to the support agreement. This will ensure that both the Customer and Supplier are fully aware of any changes and any impact on the charges for the services are fully understood.

- d) The Supplier shall not be responsible for any loss, destruction or damage caused to the Customer by any third party or by any third-party application, programme or hard or software, be it owned by the Customer or otherwise.
- e) The Supplier shall not be responsible for any loss, destruction or damage caused to the Customer due to an associate or employee of the customer responding to any form of request from a third party.
- f) We strive to offer complete customer satisfaction, however, an out of hours response cannot be guaranteed. During the normal working week if a problem, resulting in downtime, is reported by text and or by email before 16:00 hours we will aim to provide an initial assessment of the problem and a non-binding fix time by 21:00 hours. This fix time may be the next working day. During national holiday periods the response will be as soon as practical but may not be until start of business on the first working day following the holiday period.

4. Customer Data

- a) The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- b) The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party or by any application, programme or hard or software.
- c) The Customer will have the right to a full copy of its backup data at any time.
- d) If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer shall be treated as being the data controller and the Supplier shall be treated as being a data processor and in any such case the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to

the Supplier so that the Supplier may lawfully process the personal data in accordance with this Agreement on the Customer's behalf. The supplier shall ensure that any data transferred as part of this agreement is held securely and on completion of any specific task or at the end of the contract that all data is returned to the customer or securely deleted.

- e) Each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage. The parties agree that the technical and organisational measures which the Supplier elects to implement, at its discretion, shall be deemed appropriate.
- f) The Supplier shall not be responsible for any cyber attacks or data breaches.
- g) The supplier does not provide any form of electronic mail monitoring. How the contents of any email received by an associate or employee of the customer is used is solely the responsibility of the customer.

5. Customer's Obligations

The Customer shall:

- a) Provide the Supplier with all necessary co-operation in relation to this Agreement and all necessary access to such information and data as may be required by the Supplier in order to implement and deliver the Services.
- b) Provide such personnel assistance, from time to time and as and when required, as may be reasonably requested by the Supplier.
- a) Comply with all applicable laws and regulations with respect to its activities under this Agreement.
- b) Carry out all Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the carrying out of such responsibilities, the Supplier may adjust any Performance Dates, timetable or delivery dates or schedules as set out in this

Agreement as is deemed reasonably necessary by the Supplier.

- c) Not store, distribute or transmit any Viruses, or any material through any Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, that facilitates illegal activity, that depicts sexually explicit images or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.
- d) Not use all or any part of the Services in order to build a product or service which competes with the Services, use the Services to provide services to third parties or, save where it is specifically allowed for in this Agreement, transfer, temporarily or permanently, any of its rights under this Agreement.
- e) Shall ensure necessary software backups are undertaken on a regular basis and in accordance with the advice provided by the Supplier.

6. Charges and Payment

- a) The Supplier shall invoice the Customer the Charges monthly in advance. Each invoice is due and payable thirty days following the invoice date.
- b) If the Supplier has not received payment within fourteen days after the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned
- c) The provisions of The Late Payment of Commercial Debts (Interest) Act 1998 (as amended) shall apply to this Agreement.
- d) If the Customer does not have a Remote Support agreement in place, support will be charged on an ad-hoc basis.

7. Proprietary Rights

- a) The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services.

- b) Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or any related documentation.

8. Confidentiality

- a) Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that is or becomes publicly known other than through any act or omission of the receiving party, or was in the other party's lawful possession before the disclosure, or is lawfully disclosed to the receiving party by a third party without restriction on disclosure, or is independently developed by the receiving party, which independent development can be shown by written evidence, or is required to be disclosed by law, by any Court of competent jurisdiction or by any regulatory or administrative body.
- b) Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- c) Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access, is not disclosed or distributed by its employees, agents or servants in violation of the terms of this Agreement.
- d) Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

9. Limitation of Liability

- a) The Supplier (including any liability for the acts or omissions of its employees, agents,

servants and/or sub-contractors) shall not be liable to the Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this agreement, and the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose.

- b) Except as expressly and specifically provided in this Agreement, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- c) The Supplier shall not be responsible for old hardware / data loss or any consequential financial loss after a recommendation of update has been made.
- d) The Supplier shall not be responsible for issues caused by third party equipment or third party software that has not previously been approved by the supplier.

10. Term and Termination

- a) This Agreement shall commence on the Commencement Date for the Initial Period, after which time it shall continue until the termination date, unless otherwise terminated in accordance with this Agreement.
- b) The Supplier may increase the Charge payable only on or after the expiry of the Initial Period or there is a substantive change to the inventory of customer equipment or staff numbers.

Any such change will be agreed between the customer and supplier before inclusion and any adjustment to the Charge is made.

- c) Either party may terminate this Agreement by providing the other party with 1 months' notice in writing, before the contract end date, such notice to expire no earlier than the expiry of the Initial Period.
- d) Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
 - i) The other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach.
 - ii) The other party is unable to pay its debts when due or an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party.
 - iii) Or if any other person takes possession of or sells the other party's assets, or the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way.
 - iv) The other party ceases, or provides prior warning that they will cease to trade.

- e) On termination of this Agreement for any reason:
- i) Each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party.
 - ii) The Supplier will co-operate with a new supplier's requests for information in respect of the Customer's technical network information. The Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 10 days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data.
 - iii) The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination).
 - iv) The Customer shall be responsible for providing to the Supplier a hard drive with sufficient capacity to enable the Customer Data to be downloaded on to the hard drive. The Customer Data will be made available for collection by the Customer, or at the Customer's option may be collected by a secure courier contracted by the Customer to collect the Customer Data at the Customer's expense.
 - v) The accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

11. Force Majeure

- a) Neither party shall be in breach of this Agreement nor liable for delay in performing, failure to perform, any of its obligations under this Agreement, save for payment obligations as required by this Agreement, if such delay or failure results from events, circumstance or causes beyond its reasonable control, including, without limitation, strikes, lockouts or other industrial disputes (whether involving the workforce if the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemic, or default of suppliers or sub-contractors (the Force Majeure Event).
- b) In such circumstances, the affected party shall give immediate written notice of the Force Majeure Event to the other party, detailing the nature of the Force Majeure Event and the basis upon which is the predominant cause of the breach (anticipated or otherwise).
- c) Provided that the affected party has complied with the above clause, the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for one month from the date of the written notice, the other party may terminate this Agreement by giving 14 days' written notice to the other party.

12. Annual Terms and Renewal

- a) Licences and Hosted Products

All licences and hosted products provided by the Supplier under this Agreement shall be on an annual rolling contract. Each licence or hosted product shall have an initial term of twelve (12) months from its commencement date and shall automatically renew for successive twelve (12) month periods on the same terms and conditions unless either party provides written notice of its intention not to renew at least thirty (30) days prior to the end of the then-current term. Renewal shall be subject to the Supplier's prevailing annual licence or hosting fees at the time of renewal.

b) Remote Support Agreements

All remote support agreements are annual commitments. Once entered into, they shall remain in force for a minimum period of twelve (12) months and may only be terminated at the end of such period by providing no less than thirty (30) days' written notice. Unless such notice is provided, the remote support agreement shall automatically renew for a further twelve (12) months on the Supplier's then-current terms and pricing.

13. General

- a) A waiver of any right under this Agreement is effective only if it is in writing and applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- b) No variation or amendment of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- c) Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- d) This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- e) Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- f) If there is a conflict between the terms and conditions of this Agreement and the contents of

any Schedule(s) or other documents forming part of this Agreement, the terms and conditions of this Agreement will prevail.

- g) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- h) The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- i) This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- j) Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered provided that such delivery takes place before 4.30pm GMT, failing which it shall be deemed to have been received on the following business day. A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received on the second day after posting provided that day is a business day, failing which it shall be deemed to have been received on the following business day.
- k) This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of the United Kingdom. Any dispute shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.