

Software Support and Maintenance Terms and Conditions

Software Support and Maintenance Services are provided by HCS subject to these Conditions.

Attention is drawn to **clause 11**.

1 Definitions & Interpretation

1.1 Definitions

Additional Charges: the charges for any Additional Services to be provided under the Agreement by HCS to the Customer such charges to be invoiced by HCS at its discretion and payable by the Customer within 30 days of the date of the HCS Invoice.

Additional Services: any additional maintenance and support services to be provided by HCS to the Customer at HCS's discretion during Normal Support Hours or Out of Hours during the Term of the Agreement.

Agreement: the software support and maintenance contract between HCS and the Customer for the provision of software support and maintenance services in accordance with these Conditions.

Commencement Date: the date specified on the Agreement.

Conditions: the terms and conditions of sale and supply as set out in this document (as amended from time to time). These Conditions apply to the exclusion of all other terms and conditions (including any that the Customer purports to apply).

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Maintenance and Support Services, who need to know the confidential information in question (**Representatives**) to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure including information embodied in the Software and Software documentation. For the avoidance of doubt, the charges and terms of this Agreement shall be deemed to be Confidential Information of HCS.

Customer: the person or firm who purchases the Maintenance and Support Services from HCS.

Equipment: the computer equipment supplied by HCS and on which the Software is installed and in operational use and specified in the Agreement.

HCS: HCS Remora Limited incorporated and registered in England and Wales with company number whose registered office is at Suite 4, 29/31 Lee Lane, Horwich, Bolton, BL6 7AE.

Initial Period: a minimum period of 12 months or such period as stated on the Agreement.

Maintenance and Support Charge: the fee payable for the Maintenance and Support Services to be provided under the Agreement.

Maintenance and Support Services: the maintenance and support services specified in the Agreement and to be provided by HCS in respect of the Equipment and/or Software during the Normal Support Hours for the duration of the Agreement until such time as terminated in accordance with these Conditions. Maintenance shall be within reasonable limits, as determined by HCS, and does not include requests for basic product training or technical consulting.

Normal Support Hours: Monday to Friday from 09:00am to 17:00pm (excluding public holidays).

Out of Hours: any time outside the Normal Support Hours.

Renewal Period: each successive 12-month period after the Initial Period for which the Agreement is renewed.

Software: the systems, applications and computer programs of HCS specified in the Agreement and supplied by HCS to the Customer.

Term: the Initial Period together with the all Renewal Periods.

1.2 Interpretation

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (d) a reference to **writing** or **written** includes emails.

2 HCS Obligations

In consideration of the payment by the Customer (from time to time) of the Maintenance and Support Charge, HCS shall provide the Maintenance and Support Services in respect of the Software and/or Equipment from the Commencement Date for the Term, unless and until such time as the Agreement is terminated in accordance with these Conditions.

3 Maintenance and Support Charge

- 3.1 The Customer shall pay the first installment of the Maintenance and Support Charge (plus VAT) (being non-refundable) on the date of this Agreement and thereafter monthly (unless agreed otherwise by HCS) in advance by credit transfer to any bank account in the UK that HCS shall nominate from time to time. No maintenance and/or support shall be provided by HCS until payment has been received by HCS.
- 3.2 Any Additional Charges payable by the Customer under the Agreement shall be paid within 30 days from the date of the HCS Invoice.
- 3.3 HCS shall have the right to charge interest on overdue invoices at the rate of 4% per annum above the base rate of The Royal Bank of Scotland, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment, whether before or after judgment.
- 3.4 HCS shall be entitled to increase the Maintenance and Support Charge and/or Additional Charges for subsequent Renewal Periods by giving to the Customer not less than 30 days prior written notice from time to time.

4 Risk

Risk in the Software and Equipment (if any) on which the Software is recorded shall pass from HCS to the Customer on delivery of the Equipment and/or installation of the Software.

5 Maintenance and Support Services

- 5.1 During the Term, HCS shall provide the Customer with the Maintenance and Support Services for the Equipment and/or Software. It is a condition of the Agreement that the Customer provides HCS such remote access as HCS may reasonably require in order for HCS to carry out its obligations under the Agreement remotely.

- 5.2 The Customer can telephone the HCS Support Line with any problem relating to the Software and/or Equipment and depending on the time of that call, may incur Additional Charges in accordance with the terms of this Agreement.
- 5.3 HCS shall provide technical advice by telephone, remote access, or mail (including email), as shall be necessary to resolve the Customer's difficulties and queries in using the Software and/or Equipment (if appropriate).
- 5.4 HCS will use its reasonable endeavours to correct any defect whether by telephone instructions or by remote access to the Customer's computer system.
- 5.5 On-site support will be provided by HCS where appropriate in the event that remote access cannot resolve a problem. HCS reserves the right to invoice the customer for travel and subsistence as Additional Services or at a charge rate confirmed by HCS in advance of providing such on-site support.
- 5.6 The Customer shall supply to HCS a detailed description of any fault or error that has occurred with the Software and/or Equipment and the circumstances in which it arose, and shall submit sufficient material and information to enable HCS's support staff to deal with the problem by remote access.
- 5.7 HCS have no obligation to perform Maintenance and Support Services if any monies owed by the Customer to HCS remain unpaid.

6 Additional Services

- 6.1 The following are (but not limited to) error correction services:
 - a) defects or errors resulting from any modifications of the current release made by any person other than HCS;
 - b) incorrect use of the current release or operator error;
 - c) any fault in the Equipment or in any programs used in conjunction with the current release;
 - d) defects or errors caused by the use of the current release on or with equipment (other than the Equipment) or programs not supplied by or approved in writing by HCS.
- 6.2 Technical advice by telephone, remote access, or mail (including email), as shall be necessary to resolve the Customer's difficulties and queries in using the Software and/or Equipment (if appropriate) in connection with 6.1 shall be chargeable by HCS to the Customer as Additional Services.
- 6.3 HCS reserves the right to charge the Customer for providing such Additional Services at the Additional Charge specified on the Agreement for such Additional Services where such services are provided: -
 - a) at the request of the Customer; or
 - b) at the request of the Customer but which HCS believes are unnecessary.

7 Excluded Support and Maintenance

- 7.1 Under the Agreement, HCS shall be under no obligation to provide Maintenance and Support Services in respect of the following problems: -
 - a) problems resulting from any modifications or customisation of the Software and/or the Equipment not authorised in writing by HCS. For the avoidance of doubt, modifications to the Software shall include but not be limited to changes to the logical or physical database schema for the Software, changes to the disk layout and configuration, and hand-modified changes to the data within the database;
 - b) any software other than the Software;
 - c) incorrect or unauthorised use of the Software;
 - d) any programs used in conjunction with the Software;
 - e) re-installing or moving the Equipment and/or Software to alternative premises of the Customer;
 - f) problems relating to the Customer's computer hardware, operating system software, or third party application software or any other incompatibility issues or any data feeds or external data unless such equipment have been supplied by HCS.
- 7.2 Any time spent providing Support and Maintenance by HCS in connection with 7.1 following a request from the Customer will be paid for by the Customer for an Additional Charge.
- 7.3 HCS reserves the right to discontinue the Maintenance and Support Services for any certain specifications of the Software and/or Equipment. HCS will provide thirty days written notice in advance to the Customer in such circumstances.

8 Undertakings

- 8.1 HCS undertakes that all Maintenance and Support services supplied under the Agreement will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 8.2 The Customer acknowledges that it is the responsibility of the Customer to ensure that the facilities and functions of the Software are used as installed by HCS and are not modified.
- 8.3 Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the satisfactory quality, fitness for purpose, or ability to achieve a particular result, of the Equipment and/or Software is given or assumed by HCS, and all such warranties, conditions, undertakings and terms are hereby excluded.
- 8.4 The Customer hereby agrees that its sole remedy in respect of any non-conformance with any warranty in this Agreement is that HCS will remedy such non-conformance (either by itself or through a third party).
- 8.5 HCS does not undertake that all errors or failures of the Software to perform its desired functions can and will be corrected. HCS shall use its reasonable endeavours to correct all errors in the Software, so long as the errors are repeatable by HCS, or it is possible to provide a software patch; or to bypass around such errors.
- 8.6 The Customer must promptly notify HCS of any breach of the Undertaking in this clause 8 in order to benefit from the remedy stated above, and in any event within three months of becoming aware of the breach.

9 Customer's Warranty

- 9.1 The Customer warrants that it has not relied on any oral representation made by HCS or upon any descriptions, illustrations and specifications contained in any publicity material produced by HCS which are only intended to convey a general idea of the products and services mentioned therein.
- 9.2 The Customer warrants that it shall comply in all material respects with all applicable laws, regulations and codes of conduct (whether statutory or otherwise) of the United Kingdom, and that all licences, permissions and consents required for carrying on its business have been obtained and are in full force and effect.

10 Customer's Obligations

- 10.1 The Customer shall:
 - (a) operate the software as installed by HCS;
 - (b) by arrangement, grant access to premises and/or systems at all times for the purpose of providing support and maintenance;
 - (c) make hardware accessible to HCS's support staff, and as required enable logons/passwords for such support staff (who will be provided with their own logons);
 - (d) permit HCS to update the software from time-to-time;
 - (e) when upgrades or fixes occur, to provide a reasonable level of assistance in implementation and testing;
 - (f) provide reasonable notice of any intention to change hardware or operating system or data-feeds;
 - (g) the Customer shall provide HCS with reasonable direct and remote access to the Customer's equipment and the Software, and shall provide such reasonable assistance as HCS may request, including, but not limited to, providing sample output and other diagnostic information;
 - (h) the Customer shall provide all HCS employees who attend at their premises in connection with this Agreement with full details of any Health and Safety Regulations relating to the site;
 - (i) effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person;
 - (j) retain the Software and all copies of it under the Customer's effective control;
 - (k) comply with all reasonable instructions of HCS with regard to the use of the Software, including, without limitation, the implementation of upgrades to the Software, third

party software, specified operating system and computer hardware which HCS may provide from time to time;

- (l) not alter or modify the whole or any part of the Software in any way whatsoever, nor to permit the whole or any part of the Software to be combined with, or become incorporated in, any other programs.

11 Liability

- 11.1 Neither party excludes or limits liability to the other party for:
 - (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by negligence; or
 - (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply and Goods and Services Act 1982.
- 11.2 Subject always to clause 11.1, neither party shall be liable whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - (a) any loss (whether direct or indirect) of profits, business, revenue, or goodwill;
 - (b) loss of corruption (whether direct or indirect) of data or information; or
 - (c) any special, indirect nor consequential loss, costs, damages, charges or expenses however arising under this agreement.
- 11.3 Subject always to clause 11.1, HCS's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to an amount equivalent to the monies actually paid by the Customer to HCS in the relevant Initial Period or Renewal Period when the alleged breach occurred.
- 11.4 The parties hereby acknowledge and agree that the limitations contained in this clause 11 are reasonable in light of all the circumstances.

12 Confidential Information

- 12.1 The term Confidential Information does not include any information that:
 - (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was known to the receiving party before the information was disclosed to it by the disclosing party; or
 - (d) the parties agree in writing that is not confidential or may be disclosed.
- 12.2 Each party shall keep the other's Confidential Information confidential and shall not:
 - (a) use any Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement (**Permitted Purpose**); or
 - (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 12.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:
 - (a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 12.
- 12.4 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 12.5 Each party reserves all rights in the Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this agreement, are granted to the other party, or are to be implied from this agreement.
- 12.6 The provisions of this clause 12 shall remain in full force and effect notwithstanding any termination of the Agreement.

13 Term and Termination

- 13.1 This Agreement shall commence on the Commencement Date and shall remain in force (unless terminated earlier in accordance with clause 13.2) for the Initial Period. The Term of the agreement shall automatically be extended for the Renewal Period at the end of the Initial Period and at the end of the Renewal Period, unless a party gives written notice to the other party, not later than 90 days before the end of the Initial Period or the relevant Renewal Period, to terminate the agreement.
- 13.2 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
 - (b) the other party commits a material breach of any material Term of this Agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the other party:
 - (i) suspends, or threatens to suspend, payment of its debts; or
 - (ii) is unable to pay its debts as they fall due or admits inability to pay its debts.
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - (f) a person being becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the party;
 - (g) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(c) to clause 13.2(f) (inclusive); or
 - (h) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.3 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it effect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come onto or continue in force on or after such termination.

14 Data Protection

Each of HCS and the Customer warrants to the other that it will at all times comply with its obligations (if any) under the Data Protection Act 2018 (as amended from time to time).

15 General

- 15.1 **Force Majeure.** Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if that delay or failure results from events, circumstances or causes beyond its reasonable control. In these circumstances the affected party shall be entitled to a reasonable extension of the time for performing its obligations, provided that, if the period of delay or non-performance continues for 8 weeks, the party not affected may terminate this agreement by giving 14 days' written notice to the other party.

15.2 Assignment and other dealings.

- (a) HCS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of the HCS.

15.3 Entire Agreement.

- (a) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

15.4 Variation. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.5 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.6 Severance. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

15.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action, or where applicable, any arbitration or other method of dispute resolution.

15.8 No Partnership or Agency. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party, the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

15.9 Third Party Rights. No one other than a party to this Agreement shall have any right to enforce any of its terms.

15.10 Governing Law. The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

15.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.