

## Support Services Terms and Conditions

### 1. How these Terms and Conditions work

1.1 These Terms and Conditions incorporate the Master Services Terms and Conditions (the "MSTC") which are available on our website at [www.outsourcing.co.uk](http://www.outsourcing.co.uk) and apply to the Support Services you have asked us to provide. Please see clause 1 of the MSTC for details of how the Order Form, MSTC and these Terms and Conditions work together to govern our provision of the Support Services to you.

1.2 The defined terms below apply in these Terms and Conditions.

**"Actual Infrastructure"** means the hardware, software, network and other infrastructure which you use in connection with the operation of the Supported Software;

**"Customer Infrastructure"** means the part of the Actual Infrastructure which is not made available by us or Microsoft.

**"Customised Software"** means software developed specifically for you which may be stand alone or may integrate with or be a modification to Standard Software;

**"Defect"** means a failure of the Supported Software to meet their specification;

**"Infrastructure Guidelines"** our guidelines in relation to the Actual Infrastructure made available from time to time on the Outsourcing Website;

**"Microsoft"** means Microsoft Ireland Operations Limited of 70 Sir Rogerson's Quay, Dublin 2, Ireland;

**"Microsoft Infrastructure"** means the part of the Actual Infrastructure which is made available by Microsoft;

**"Microsoft Software"** means software in which the Intellectual Property Rights is owned by or licensed to or made available by Microsoft or any of its Associates;

**"Outsourcing Infrastructure"** means the part of the Actual Infrastructure which is made available by us;

**"Partner of Record"** means we are recorded by Microsoft as the registered partner for the relevant Microsoft Software forming part of the Supported Software;

**"SDK"** the guidelines laid down in the Microsoft Software Development Kit;

**"Support Plan"** means the support plans in respect of the Support Services we provide from time to time as detailed on the Order Form;

**"Standard Rates"** our standard rates from time to time which are available on

	request;
<b>"Standard Software"</b>	means non-customised packaged software and may include non-customised Microsoft Software;
<b>"Support Charges"</b>	the charges set out on the Order Form and in this Order;
<b>"Support Services"</b>	means the support services to be provided by us in respect of the Supported Software, the Outsourcery Infrastructure and the Microsoft Infrastructure as described in an Order Form (and <b>"Support Service"</b> means any one of the Support Services);
<b>"Supported Software"</b>	means software to be supported by us in accordance with this Order, as set out in the Order Form and other software in respect of which we agree to provide Support Services;
<b>"Third Party Service Provider"</b>	means the provider of any Third Party Services;
<b>"Third Party Services"</b>	means any part of the Support Services which we procure from a third party, including any third party services and/or equipment which we use in order to provide the Support Services.

## 2. What we will do

- 2.1 We will provide the Support Services in accordance with this Order and the applicable Support Plan. If the Support Services relate to CRM online, we shall respond to your request to provide support, however you acknowledge that we may not be able to offer a resolution to a Defect if Microsoft does not offer a resolution to the Defect.
- 2.2 We will ensure that our personnel performing the Support Services use standard, commercially available computer software virus detection and prevention software, while performing the Support Services.
- 2.3 We will ensure that the Support Services will be performed in such a way as not to cause any unscheduled interruption to the Supported Software (other than any agreed or unavoidable interruption which is required in order to perform the Support Services in a proper and efficient manner).
- 2.4 Where we anticipate that in order for us to provide the Support Services your business processes will be interrupted we will request your prior consent to such interruption occurring, which must not to be unreasonably withheld or delayed.
- 2.5 You must give notice to us as soon as you are reasonably able upon becoming aware of a breach of any of our obligations above and your exclusive remedy in respect of any such breach will be as set out in clause 2.6.
- 2.6 In the event of any breach by us of any of this clause 2 and as long as you have complied with clause 2.5 and you provide such information as may reasonably be requested by us in respect of the relevant breach, we will, at our sole cost, remedy that breach within 30 days following receipt of the notice from you under clause 2.5,

failing which you will be entitled to pursue such rights and remedies as are available to you under this Order.

### **3. What you must do**

#### **3.1 You must:**

- (a) nominate a representative to liaise with us on all matters relating to the Support Services and whose instructions, decisions and requests will (where the same are agreed to by us) be binding upon you;
- (b) promptly make available to us such programs, Supported Software, Customer Infrastructure, operating manuals, log-in details, facilities and information as may be necessary to enable us to perform our obligations under this Order and will, if requested by us, provide staff familiar with the same, and ensure such staff co-operate fully with our personnel in the performance by us of our obligations under this Order;
- (c) ensure, at all times during which we are providing the Support Services at your premises that:
  - (i) such premises provide adequate working space and facilities as our employees, contractors or agents may reasonably require to carry out such Support Services;
  - (ii) you have obtained all necessary consents to enable us, our employees, contractors and agents to enter onto and remain upon the premises to carry out such Support Services; and
  - (iii) such premises are safe and all our employees, contractors and agents are protected from all reasonably foreseeable dangers

provided that, if you do not comply with the requirements of clause 3.1 (b) and clause 3.1(c)(i) to (iii)(inclusive) we shall be entitled to charge you, at our Standard Rates, for the time spent by us where we are unable to provide the Support Services because of your non-compliance with these clauses;

- (d) ensure that you and your staff at all times follow our reasonable recommendations and requirements from time to time regarding the use of the Actual Infrastructure and the Supported Software and in respect of the taking and provision of security and backup copies;
- (e) promptly notify us if you believe any part of the Actual Infrastructure and/or Supported Software is not operating properly;
- (f) provide at your own expense such telecommunication facilities as are reasonably required by us for testing and diagnostic purposes;
- (g) keep full security copies of your data, programs, databases, files and computer records in accordance with best computing practice;
- (h) provide upon request by us, the applicable licence number(s) for the Supported Software;

- (i) use versions or releases of the

Supported Software which are supported by Microsoft so as to enable us to meet our support obligations under this Order, and we agree to notify you as soon as reasonably possible of any changes to the software supported by Microsoft which would affect the Support Services;

- (j) ensure that any changes you make to the Actual Infrastructure the Customised Software, the Microsoft Software, the Standard Software and/or the Supported Software:
  - (i) are only made with our prior written consent;
  - (ii) are within Microsoft's current SDK;
  - (iii) are within the Infrastructure Guidelines; and
  - (iv) shall not affect the installation of subsequent new versions or updates to the Supported Software whether from Microsoft or otherwise; and
- (k) use the Supported Software (and the Actual Infrastructure upon which the same is run) in a proper and careful manner and upon such media only as we may from time to time approve in connection with such Supported Software (such approval will not to be unreasonably withheld).

3.2 You acknowledge you will be responsible for any costs associated with any work required to fix changes that do not comply with the requirements of clause 3.1(j) (i) to (iv) (inclusive) and/or 3.1(i).

3.3 You acknowledge that we do not have to provide Support Services if the provisions of clause 3.1(i) to (iv) (inclusive) and/or 3.1(i) have not been complied with and that in such circumstances you are still required to pay the Support Charges.

3.4 You warrant that to the best of your knowledge any items and information provided to us pursuant to clause 3.1 will be complete and accurate in all material respects.

#### **4. Price and Payment**

4.1 You shall pay the Support Charges, including without limitation any additional Charges payable by you in accordance with clause 3.1(c), clause 3.2, clause 4.3 and clause 4.4, within 14 days of the date of our invoice.

4.2 If you have multiple Support Services, the highest level of Support Plan selected by you for one Support Service as detailed on the Order Form shall apply to all Support Services. You cannot have different Support Services with different levels of Support Plan.

4.3 Expenses incurred by us in connection with the provision of the Support Services will be reimbursed by you in addition to payment of the Support Charges as detailed in the Order Form.

4.4 If you purchase additional Standard Software or Customised Software or additional licenses for such items from us whilst this Order is in effect, we will calculate the additional Support Charges for incorporating such items within this Order:

- (a) in respect of Standard Software at our then Standard Rates; and

- (b) in respect of Customised Software in accordance with the relevant quotation provided to you in respect of support for the additional Customised Software

up to the next renewal date, and unless we and you agree otherwise in writing, we will either invoice for such Support Charges upon delivery of the Standard Software and/or Customised Software (as applicable), or in the event of minor pieces of work, will review the total changes periodically in arrears, and raise a consolidated invoice for support of those items delivered during that period.

- 4.5 In the event that you request us not to incorporate any additional Customised Software or Standard Software into the Order, and to the extent that this makes it impractical or not commercially viable for us to continue providing Support Services in accordance with the terms of this Order, we reserve the right to not provide the Support Services and/or terminate this Order in which case you are still required to pay the Support Charges for the period for which you have agreed to take the Support Services.
- 4.6 If you reduce the scope of the Supported Software in any other manner the Support Charges will remain the same and you are still required to pay the Support Charges for the period for which you have agreed to take the Support Services.

## **5. Exclusions and Liability**

- 5.1 If we are not Partner of Record for any part of the Supported Software which is Microsoft Software we will not provide Support Services for that part of the Supported Software and you acknowledge that in such circumstances you are still required to pay the Support Charges for the period for which you have agreed to take the Support Services.
- 5.2 Under no circumstances will we be under any Liability under this Order in respect of any faults, Defects, defects, damage, delay or loss arising directly or indirectly from:
  - (a) operator error, failure or error in operational software (other than where such operational software is Supported Software) or any defect in the Customer Infrastructure or any defect in the Microsoft Infrastructure on which the Supported Software is run;
  - (b) your failure to copy data or provide restorable back-up and/or security copies of data, programs database, files and/or computer records;
  - (c) your failure to provide us with timely access to the Customer Infrastructure on which the Supported Software is run in order to provide the Support Services;  
or
  - (d) any delay caused by you under clause 2.4;
  - (e) any changes or updates made to the SDK by Microsoft;
  - (f) any changes, updates, patches and/or fixes issued by Microsoft;
  - (g) any changes made by you to the Customer Infrastructure, the Customised Software, the Microsoft Software the Standard Software and/or the Supported Software which is not in accordance with the requirements of clause 3.1(j)(i) to (iv)(inclusive) and/or 3.1(i);

- (h) any defect, issue, problem or Defect with the Microsoft Software or the Microsoft Infrastructure; or
- (i) any of the circumstances set out at clause 5.3 below.

5.3 Without prejudice to clause 15.3 of the MSTC, under no circumstances will we have Liability to reinstate or assist in the reinstatement of (or be responsible for the cost of reinstatement of) any data loss, except where such data loss is caused by our negligence, in which case we will be responsible for the restoration of the data to the last back up made by us or you in accordance with our instructions but not for any re-keying of data lost.

## 6. Termination

6.1 We may terminate this Order with immediate effect by notice in writing to you:

- (a) if we are entitled to do so under clause 4.5;
- (b) if we are informed by any Third Party Service Provider that such Third Party Service Provider is required to cease any Third Party Services (in whole or in part) by a competent regulatory authority (e.g. pursuant to a withdrawal, revocation or non-renewal of authorisations); or
- (c) any Third Party Services cease to be provided (in whole or in part) by any Third Party Service Provider to us or for use or resale by us for whatever reason; or
- (d) if any Third Party Services which are essential to the provision of the Support Services cease to be available at all or at an appropriate capacity and there will not be available any suitable replacement.

## 7. General

7.1 Clauses 4 and 5 will continue to be in force even if this Order has terminated.