



Service Agreement

Prepared by: b2b IT Services

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Service Agreement

This Agreement (“**Agreement**”) is made as of: (the “**Effective Date**”)

Between

(1) B2B IT Services Services Ltd (company number: 5115366) a company incorporated in England and Wales of Columbus House, Village Way, Tongwynlais, Cardiff CF15 7NE (“**B2B**”); and

(2) The “**Customer**”

Background

B2B provides IT support and consultancy services and the Customer wishes to purchase the Support Services (as defined below) and B2B wishes to sell the Support Services to the Customer pursuant to the terms of this Agreement.

Provisions agreed by parties

1. Definitions

1.1 The terms of this Agreement are comprised in these terms and conditions (the “**Terms**”) set out below.

1.2 The definitions and rules of interpretation in this clause apply in this Agreement:

“**Support Agreement**” the support agreement provided by B2B to the Customer setting out the Support Services, the number of Support Hours to be provided, Contract Amount, Customer Equipment and such other terms as may be agreed by the parties; The support agreement has an Effect Date as indicated above

“**3rd Party Applications**” custom authored software, line of business applications or 3rd party hardware or any other such application used by the Customer from time to time;

“**Confidential Information**” has the meaning given in clause **17.4**;

“**Consultancy Day**” a seven (7) hour day during B2B Office Hours (other than a Saturday or Sunday) when banks in London are open for business;

“**Contract**” has the meaning given in clause **2**;

“**Contract Amount**” the monthly amount payable for the Support Services as set out in the Support Agreement;

“**Control**” the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise;

“**Customer**” as defined with the Support Agreement

“**Customer Equipment**” the inclusive list of IT equipment provided by the Customer and contained in the Support Agreement.

“**Customer Locations**” has the meaning given in clause 3.5;

“**Customer Representatives**” has the meaning given in clause 3.3;

“**Effective date**” is the contract start date as defined as the “Contract Start Date” within the Support Agreement

“**End Users**” the end users of the Customers being employees of the Customer;

“**Initial Term**” has the meaning given in clause 11.1;

“**Monthly Visit**” has the meaning given in clause 3.6

“**Renewal Period**” has the meaning given in clause 11.1;

“**Response Time**” The time between the Support Call being received by B2B and the commencement of remedial action by B2B

“**Support Call**” a call made by a Customer Representative reporting a Support Incident to B2B in accordance with clause 3.2;

“**Support Hour**” time spent on site at Customer Locations;

“**Support Incident**” any incident reported to B2B by a Customer Representative requiring the need for the Support Services;

“**Support Services**” the support services provided by B2B as set out in the Support Agreement;

“**System**” the Customer’s IT system;

“**Term**” the Initial Term and any Renewal Period;

“**Time Unit**” a one hour period;

“**B2B Consultant**” the B2B employee or agent allocated at the discretion of B2B to the Customer as a point of contact in respect of the Support Services to be provided.

“**B2B Office Hours**” the hours between 08:30 and 17.30 during any Consultancy Day.

1.3 Clause and paragraph headings shall not affect the interpretation of this Agreement and references to clauses are to the clauses of this Agreement.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this Agreement and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of this Agreement.

1.8 Documents in agreed form are documents in the form agreed by the parties and initialled by them for identification.

1.9 A reference to an agreement is a reference to that agreement as varied or notated (in each case, other than in breach of the provisions of this Agreement) at any time.

1.10 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.

2. Contract Overview

The contract that the Customer has with B2B is outlined in the Support Agreement and these Terms and comprise the total of the contractual agreement between the parties to this Agreement (the “**Contract**”).

3. Support Services

3.1 B2B provide a number of Support Services, ranging from ad-hoc call out and system repair to full onsite consultancy service. The Customer’s Support Agreement sets out the Support Services to be provided by B2B to the Customer under the Contract. The parties may agree in writing to vary the Support Services to be provided from time to time.

3.2 All Support Calls should be made to B2B via the B2B helpdesk during B2B Office Hours, details of which are set out in the Support Agreement.

3.3 The Customer should specify their named contacts authorised to deal with any problem escalation following a Support Call, approval of any downtime and chargeable work to be carried out by B2B with B2B (“**Customer Representatives**”) and this list of Customer Representatives will consist of a primary contact and secondary contacts. Authority to include additional secondary contacts will need to be performed by the primary contact. The Customer can request in writing that only Support Calls originating from the Customer Representatives will be processed to ensure a level of control of any Support Hours incurred.

3.4 Incoming Support Calls can be designated by the Customer as urgent, high, medium or low as a rating of priority when the Support Call is initially submitted to B2B. If the Customer has more than one (1) outstanding/current Support Call this value will be used to determine which Support Call should be worked on at a higher priority.

3.5 B2B will only offer Support Services during B2B Office Hours in respect to Customer Equipment and Customer staff at Customer locations designated within the Support Agreement to be targets for such Support Services (“**Customer Locations**”). Support Services can additionally be offered at the discretion of B2B (within the existing Contract) to Customer staff working from home or other locations on request by the Customer. B2B reserves the right to make additional charges, including all travel expenses, for providing Support Services at locations other than the Customer Locations. It is the Customer’s responsibility to ensure that B2B are permitted access to locations outside of any designated Customer Location.

3.6 If specified within the Support Agreement B2B will provide for one optional (1) unbilled Monthly Visit per Customer per calendar month to a nominated Customer Location. For each Monthly Visit we require at least 1 week notice. The purpose of these visits will be to carry out regular system checks, discuss future plans and perform any non-urgent work notified by a Customer Representative at least 24 hours prior to the visit. The maximum duration of the Monthly visit will be two (2) Time Units. Additional time spent on site during the Monthly visit will be counted as Support Hours. Monthly Visits do not roll over the following month.

4. Change Control

B2B will adhere to any change control processes regarding changes to the Customer’s IT systems that the Customer already has in place at the Effective Date or any that are brought into place during the Contract provided that these are notified to B2B in writing with reasonable notice. It is the Customer’s responsibility to ensure that B2B are notified in writing about the existence of, or any changes to, a change control process.

5. Agreed Product Set

5.1 B2B cannot always provide Support Services for every IT related product including, without limitation, 3rd Party Applications. Where the Customer has such 3rd Party Applications, the Customer must have a current support contract with the

author/manufacture of bespoke software solutions. B2B accepts no liability for its failure to remedy any Support Incident that is directly or indirectly caused by the failure of such 3rd Party Applications.

5.2 B2B will act as the point of contact between the Customer and the software manufacturer if a support call needs to be placed and can be used to determine if the problem experienced actually lies with the product or some underlying part of the Customer's IT infrastructure.

6. Support Services description

6.1 B2B provides the Support Services to the Customer as set out in the Support Agreement. Each Support Call requiring an onsite visit will be charged at the rate outlined in the Support Agreement.

6.2 The Support Agreement may include a number of Support Hours available to the Customer in each calendar month. The purchase of the Support Hours allows the Customer on site support (Support Hours) during B2B Office Hours. Support Hours do not roll over to the following month.

6.3 The number of Support Hours that a Customer purchases should be suitable for their business need over the period of the Contract unless the Customer has purchased an ad-hoc support contract which allows Support Calls when needed and variable monthly billing.

6.4 In order to prevent unauthorised use or wasting of Time Units B2B recommends that the Customer provides B2B with a list of authorised End Users who are permitted to log Support Calls with the B2B helpdesk. The Customer may add additional End Users to the list of authorised End Users on written notice to B2B, subject always to these Terms. In the event that the Customer does not provide B2B with a list of authorised End Users B2B shall not be held responsible for Time Units used by an 'unauthorised' Customer End User.

6.5 All time billing is completed in used Time Units and not in exact minutes of time.

6.6 If the Customer provides remote access into their systems for B2B to resolve any Support Incidents, then no extra charge will be made for the Support Services provided remotely.

6.7 The Support Agreement describes the Response Time in which B2B will respond to a call logged with B2B regarding a Support Incident.

6.8 A Support Call will be closed when it has been mutually agreed (via the helpdesk response system) with the Customer that the Support Call has been resolved, or reached a final conclusion, or Customer does not wish to use or expend further Time Units on the Support Call.

6.9 Each Support Incident is recorded for billing and/or reporting purposes. Itemised billing is available to Customer upon request and B2B reserves the right to charge the Customer for providing such itemised billing.

7. On-site Access

7.1 If a Support Incident cannot be resolved remotely then B2B will visit the Customer Location to try and resolve the Support Incident. Travel to the Customer Location is not charged additional to the Support Hours that will be used during the visit.

7.2 Customer Locations or other locations nominated by the Customer that are not within a reasonable travelling distance of B2B personnel and where an overnight stay is required will be charged at 40p per mile from B2B registered office and cost of accommodation and expenses. Distance as determined from <http://maps.google.co.uk>. For the purposes of this clause **7.2 “reasonable travelling distance”** is defined as less than sixty (60) minutes, or twenty five (25) miles, one (1) way journey to the Customer Location or other requested location.

8. What B2B Will Do

8.1 As part of the Support Services B2B will:

8.1.1 install any updated operating system (but not application) software releases supplied to B2B by software manufacturers and intended for incorporation into the System;

8.1.2 where ordered by the Customer, set up and maintain command files for System start-up, System back-up and other batch processes required in the normal running of the System;

8.1.3 remotely monitor the System during the morning of each Consultancy Day that the Support Services are provided and where prompted correct potential problem areas in back-up procedures;

8.1.4 remotely carry out routine housekeeping on the System by tidying up files, clearing disk space (where possible), event log checks and tuning the System as and when it deems necessary; and

8.1.5 advise on any problems associated with hardware or operating system software.

9. Payment

9.1 A credit limit for Support Services and for all orders will be as set out in the Support Agreement unless the Customer does not pass a credit check performed on starting the Contract. If a Customer does not have a credit limit with B2B then payment will be required in advance.

9.2 The Customer agrees and accepts that it is necessary for B2B to carry out certain credit checks and referencing against the Customer prior to and during the Term to ensure that it can maintain agreed invoicing arrangements.

9.3 At the beginning of each calendar month invoices for the Contract Amount for that month will be compiled and shall be payable by Standing Order set up at the inception of the Contract. Any invoices for additional work completed over and above the Contract Amount will be raised separately and will be payable within thirty (30) days after the invoice date.

9.4 All payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment at the rate prescribed in the *Late Payment of Commercial Debts (Interest) Act 1998, as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002* from the date payable until payment is received. Such interest is due for payment immediately on invoice. Notwithstanding the above provisions for late payment, in such event B2B may, at its option and without prejudice to any other remedy at any time after payment has become due, terminate or temporarily suspend this Agreement.

9.5 All fees and expenses payable by the Customer pursuant to this Agreement are exclusive of value added tax and all other sales taxes and duties which may be chargeable on any part of the Support Services provided to the Customer pursuant to the terms of this Agreement. Such taxes and duties shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

9.6 Any credit note issued by B2B will be valid for twenty four (24) months from date of issue except where the contract is coming to an end. Cash refunds are not available

10. Purchasing Additional Support Hours

A Customer wishing to use the services of B2B to carry out or manage large-scale project work may agree with B2B the total cost of the work prior to commencement. The quoted value of the work may be expressed as B2B Consultant hours or as a total price.

11. Term and Contract Renewal

11.1 The Contract has, unless otherwise agreed within the Support Agreement, a minimum fixed term of twelve (12) months from the Effective Date (the “**Initial Term**”) irrespective of any notice of termination and, thereafter, shall continue for further twelve (12) month periods (“**Renewal Period**”).

11.2 Either party, unless otherwise agreed within the Support Agreement, may terminate the Contract by giving the other not less than six (6) months’ written notice of termination.

11.3 If at each anniversary of the Effective date, the Customer has not given written notice of termination, the Contract will be considered to have been renewed for a further twelve (12) months.

11.4 During the course of the Contract there is a limited provision specified within the Support Agreement for an increase to the Customer Equipment contents without change to the Contract Amount. For increases to the Customer Equipment outside of this provision the Contract Amount may automatically be increased proportionally.

11.5 At each anniversary of the Contract, B2B reserve the right to review the Contract detail with the Customer in line with any increase in the Retail Price Index.

12. Contract Termination

12.1 This Agreement will commence from the Effective Date and will continue unless terminated or renewed in accordance with the terms of this Agreement.

12.2 Notwithstanding the provisions of clauses 11.1 and 12.1, B2B may give notice in writing to the Customer terminating this Agreement with immediate effect if:

12.2.1 an order is made or a resolution is passed for the winding up of the Customer, or an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Customer 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 or manager or administrative receiver is appointed in respect of all or any of the Customer's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order, or the Customer takes or suffers any similar or analogous action in consequence of debt, or the Customer is unable to pay its debts as they fall due, or an arrangement or composition is made by the Customer with its creditors or an application to a court for protection from its creditors is made by the Customer;

12.2.2 there is a change of Control of the Customer;

12.2.3 the Customer ceases, or threatens to cease, to carry on business;

12.2.4 the Customer purports to assign its rights or obligations under this Agreement; or

12.2.5 the Customer commits a material breach of this Agreement which is not remedied within thirty (30) days of receipt of a notice from B2B specifying the breach and putting the Customer on notice of B2B's intention to terminate this Agreement

with effect from the expiry of the notice period if such breach has not been remedied to its reasonable satisfaction.

12.3 If the Customer has used Support Hours then an invoice will be issued for complete payment of all outstanding monies. This invoice will be due within thirty (30) days of the invoice date and all other outstanding fees and charges will be payable immediately by the Customer.

13. Customer Undertakings

13.1 The Customer shall:

13.1.1 have valid software licences as advised by B2B for all software operating on the System throughout the Term of this Agreement and will ensure that these licences do not expressly or impliedly prohibit third party system support or facilities management;

13.1.2 Where needed, keep the System's hardware and the software operating on the System maintained under support service contracts with the suppliers, manufacturers or publishers of such hardware and software or such other third party supplier of such services as may be agreed by B2B

13.1.3 provide B2B, its employees, agents, officers and representatives assigned to perform the Support Services with all necessary information and assistance that may reasonably be required to enable B2B to carry out its obligations to the Customer under this Agreement;

13.1.4 notify B2B immediately of any System malfunction and provide B2B with complete information concerning the malfunction;

13.1.5 Whilst attending Customer Locations or locations attended by B2B on the Customer's behalf, the Health and Safety of B2B employees, agents, officers and representatives is the Customers responsibility.

13.1.6 allow B2B, where required, to have sole access to the System during B2B Office Hours in order that the Support Services can be provided and problems resolved;

13.1.7 allow B2B to study its information and data for the purposes of rectifying problems and giving advice;

13.1.8 provide telephone and modem facilities to B2B requirements for remote investigation of System malfunctions;

B2b Warranties

14. Limitation of Liability

14.1 The Customer acknowledges that it is the best judge of the value and importance of its data held on any computer system and will be solely responsible for:

14.1.1 instituting and operating all necessary backup procedures upon Customer Equipment which is at the Customer Locations to ensure that data integrity can be maintained in the event of loss of data for any reason; and

14.1.2 taking out any insurance or other financial protection against loss or damage which may arise from loss of data for any reason.

14.2 B2B does not provide any warranty or guarantee nor is any warranty or guarantee to be implied that it will be successful in undertaking any data reconstruction and B2B does not accept any liability in this respect. B2B shall use its reasonable endeavours to perform the Support Services within any agreed time but any such times are estimates only. The Customer is responsible for keeping the System insured against all risks including when the System is located at B2B premises.

14.3 All warranties (save for those given by B2B under this Agreement), conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

14.4 Nothing in this Agreement limits or excludes the liability of B2B:

14.4.1 for death or personal injury resulting from negligence; or

14.4.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by B2B.

14.5 Subject to clause 14.3 and clause 14.4;

14.5.1 B2B shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

14.5.1.1 any special, indirect, consequential or pure economic loss, costs, damages, punitive damages, charges or expenses, resulting from the supply, purported supply, failure to supply or use of any of the Support Services, provided by B2B pursuant to this Agreement.

14.6 B2B's total 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 Contract Amount.

15. Notices

Any notice given under this Agreement by either party to the other must be in writing and delivered to the address shown on the front page of this Agreement, or to any other address notified in writing by one party to the other for the purpose of receiving notices, by personal delivery, courier, registered mail, or email and will be deemed to have been given in the case of: (a) personal delivery or courier, when delivered; (b) mailing, three (3) working days after the date of mailing, or (c) email, when a written acknowledgement is received by the sender.

16. Complaints procedure

Customer Complaints regarding any Support Services provided by B2B should be reported in writing to B2B Management. B2B will respond to all complaints. B2B will send an initial acknowledgement of receipt of a complaint within 3 working days and a further full response within 10 working days. If B2B are unable to respond fully within 10 working days, the Customer will be informed of the progress of the investigation.

17. Law and Disputes

The parties shall attempt to resolve any dispute relating to this Agreement through negotiations between senior executives of the parties who have authority to settle the dispute. If the matter is not resolved through negotiation, the parties may, at their election, attempt in good faith to resolve the dispute through an Alternative Dispute Resolution (“**ADR**”) procedure as recommended to the parties by the Centre for Effective Dispute Resolution in London. If the matter has not been resolved by an ADR procedure within thirty (30) days of the initiation of that procedure, or if either party does not wish to participate in an ADR procedure, the dispute may be referred by either party to the courts of England and Wales and the parties submit to their exclusive jurisdiction for that purpose. This Agreement is governed by the law of England and Wales.

18. General Terms of Sale

18.1 B2B has prepared this document in response to the Customers’ requirement for Support Service. No contractual relationship shall arise between the parties, and B2B will not perform any services or deliver any products or services until both parties have signed this Agreement or signed the associated Support Agreement.

18.2 This Agreement has been negotiated in good faith by the parties and each clause of this Agreement has been separately negotiated and specifically agreed upon for inclusion by the parties. Each and every limit and exclusion in this Agreement is independent and severable from the other and if held unlawful or unenforceable that part shall be struck out and the remainder shall remain in effect.

18.3 Except with respect to the obligation of the Customer to pay any sums due, neither party will be liable for total or partial failure to perform its obligations in this Agreement during any period in which its performance is prevented or hindered by circumstances beyond its reasonable control. Whilst every effort has been made to

ensure the accuracy of the information and statements contained in this document, such statements are based on B2B understanding of the information and data supplied by Customer as set out in this Contract. As such, B2B makes no warranty, representation or undertaking as to the completeness or accuracy of the information contained herein and shall not be responsible for any reliance placed thereon nor for any loss or damage suffered as a result of such reliance, save to the extent that such information forms part of or is otherwise incorporated into any subsequent legally binding agreement entered into by B2B and Customer.

18.4 Other than expressly stated in this proposal, B2B excludes all express or implied conditions and warranties (whether imposed by statute or otherwise). The information and data supplied by B2B in this document and any attachments or enclosures thereto are confidential or proprietary (hereinafter referred to as “**Confidential Information**”) to B2B. Customer shall only be entitled to use Confidential Information disclosed by B2B for the sole purpose of evaluating this proposal and for no other purpose whatsoever. Customer shall not disclose Confidential Information other than to its employees, representatives, advisers and any third parties who need to know the same for the purpose of evaluating the proposal and Customer shall procure that any of its employees, representatives, advisers, and any third parties to whom it may properly disclose the Confidential Information are aware of the obligation of confidentiality and undertake to comply with it. Any copying, distribution, reproduction or disclosure of the Confidential Information contained in this document is not permitted without the prior written permission of B2B. Where required B2B is happy to sign a suitable NDA.

18.5 After commencement of a Contract with B2B, the Customer may not employ any of B2B’s employees within 12 months of the end of the Contract term. The Customer also may not employ any services of B2B employees or former employees within 12 months of the end of the Contract even if available indirect of B2B

18.6 This Agreement and any document referred to in this Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

18.7 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

18.8 The Customer shall not without the prior written consent of B2B assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

18.9 The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this Agreement.

18.10 The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

18.11 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

18.12 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.13 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

18.14 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

18.15 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership 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