

terms and conditions

THIS AGREEMENT is made as dated on the Contract Particulars

BETWEEN:

1. Smart Solutions GRP Limited (07227868) of Unit 7, The Office Village, Forder Way, Cygnet Park, Hampton, Peterborough PE7 8GX ("the Company" and ("the Client")
- 2.

WHEREAS:

1. The Company is engaged in the business of providing IT Support Services and has skill, knowledge, qualifications and experience in that field.
2. The Client wishes to engage the Company to provide the IT Support Services subject to, and in accordance with, the terms and conditions of this Agreement.
3. The Company wishes to accept such engagement and shall provide the IT Support Services to the Client subject to, and in accordance with, the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Accepted Supply & Service Quotation"

means any Supply and Service Quotation from the Company accepted in writing by the Client.

"Agreement"

means the Agreement between the Company and the Client for the provision of IT Support comprising of these conditions and the Contract Particulars;

"Agreement Review"

means a review of this Agreement which will be conducted in accordance with identified intervals specified in that clause;

"Business Day"

means any day (Other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in London;

"Business Hours"

means the business hours of the Company which shall be 9am to 5.30pm Monday to Friday unless otherwise stated in the Contract Particulars (Day Rates are calculated on a 7.5 hour day, any hours above this will be charged at the relevant Hourly Rate);

"Client"

means the client purchasing IT Support from the Company as identified on the Contract Particulars;

"Client's Representative"

means the person who shall be responsible for liaising with the Company's Representative in accordance with Clause 7, or such other person who the Client may from time to time nominate;

"Commencement Date"

means the date on which this Agreement comes in to force as stated on the Contract Particulars;

"Company"

means Smart Solutions GRP Limited as identified on the Contract Particulars;

"Company's Representative"

means individuals who shall be responsible for liaising with the Client's Representative in accordance with Clause 7, or such other person who the Company may from time to time nominate.

"Confidential Information"

means in relation to either party, information which is disclosed to that party by the other party pursuant to or in connection with this Agreement or otherwise (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked or may be interpreted as such) and includes but is not limited to ideas; business methods; finance; prices; business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; products or services, including knowhow or other matters connected with the products or services manufactured, marketed, provided or obtained by a party, and information concerning a party's relationships with actual or potential clients, customers or suppliers and any other information which, if disclosed, will be liable to cause harm to that party.

"Contract Particulars"

means the particulars entered on the Contract Particulars section of the documentation supplied with this Agreement;

"Fees"

means the fees payable by the Client to the Company as set out in the Contract Particulars;

"Loss"

means all damages, liabilities, demands, costs, expenses, claims, actions and proceedings (including all consequential, direct, indirect, special or incidental loss or punitive damages or loss, legal and other professional fees, cost and expenses, fines, penalties, interest and loss of profit or any other form of economic loss (including loss of reputation)).

"Payment Terms"

means the Terms when the Client is required to pay for IT Support received.

"Premises"

means the Client's premises as identified on the Contract Particulars;

"Products"

means any hardware, software, cabling and/or other products as identified on any Accepted Supply and Service Quotation;

"Services"

means items identified on any Accepted Supply and Service Quotation;

"Third Party"

means any provider deemed suitable by the Company

"Term"

means the term as stated on the Contract Particulars.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
 - 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 Agreement is a reference to this Agreement

1.2.4 and each of the Schedules as amended or supplemented at the relevant time;

1.2.5 Schedule is a schedule to this Agreement; and

1.2.6 Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.2.7 Party or Parties refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 Any phrase in the Agreement introduced by the term included, including, in particular or any similar expression will be construed as illustrating and will not limit the sense of the words proceeding.

2. Term of Agreement

2.1 This Agreement will come into force on the Commencement Date as listed on the Contract Particulars, and shall continue in force for the Term subject to the provisions of Clauses 7 and 9

2.2 Subject to the Agreement Review provisions of Clause 7 the Term of this Agreement may be renewed for further periods of 12 months (which shall thereafter be defined as part of the Term).

3. Company's Obligations

3.1 The Company shall render the IT Support to the Client in accordance with the provisions of Clause 6 and in accordance with the requirements as shown on the Contract Particulars;

3.2 The Company shall perform its obligations under this Agreement in a reasonable and timely manner in accordance with the provisions of this Agreement.

3.3 The Company shall provide the Client with such information and advice in connection with the IT Support and the provision thereof as the Client may, from time to time, reasonably require both before and during the provision of the IT Support.

3.4 Time for performance or delivery is not of the essence and any timescales for performance or delivery given by the Company are estimates only. The Company will use its reasonable endeavors to provide the IT Support in accordance with any timescales set out on the Contract Particulars but will not be liable to the Client where it fails to meet any timescale.

3.5 The Company will not be liable for any failure to provide the IT Support resulting from any delay or breach by the Client of any of its obligations as set out in Clause 4

3.6 The Company shall use its reasonable endeavors to provide the IT Support as shown on the Contract Particulars. However, the Client acknowledges that, given the nature of the IT Support, the Company cannot guarantee that the IT Support will be uninterrupted or error free.

4. Client's Obligations

4.1 The Client shall provide the Company with such information in connection with the IT Support and the provision thereof as the Company may, from time to time, reasonably require both before and during the provision of the IT Support.

4.2 The Client shall perform its obligations under this Agreement in a reasonable and timely manner in accordance with the provisions of this Agreement.

4.3 The Client shall act in accordance with any and all reasonable instructions issued by the Company in relation to the IT Support Services. The Company shall not be liable for any failure to provide the IT Support or any part thereof which arises out of the Client's failure to follow any such instructions.

4.4 The Client shall allow the Company and the Company's Representative access at all reasonable times to the Premises for the purpose of providing the IT Support.

4.5 The Client shall pay for any non-contracted services requested of the Company in accordance with the Payment Terms in as listed in this Agreement.

4.6 If the Company is provided with any incorrect information or instructions in connection with the IT Support, then the Client shall pay any reasonable additional and wasted costs and expenses incurred or suffered by the Company as a result in setting-up and/or providing any Services and/or Products.

4.7 Where the Company's Representative or any Third Party Services Provider are working on Client Premises, the Client shall ensure a safe working environment in compliance with all applicable health and safety laws.

4.8 The Company reserves the right to refuse access to its servers to anyone.

4.9 Where the Services and/or Products include any software, the same is provided on a licensed basis in accordance with the applicable licence terms and conditions. The Client agrees that it will comply with all applicable licence terms.

4.10 The Client agrees to indemnify and keep indemnified the Company (and the Company harmless) from any Losses arising as a result of the Client's breach of its duties under clause 4.8.

4.11 The Client shall not use the Services and/or Products, or any Company Equipment:

- 4.11.1 to provide, store, host, link to or connect to illegal content, content designed to offend or cause needless anxiety to others, any material which is abusive, indecent, defamatory, obscene, threatening, menacing or likely to cause harassment or which is in breach of any copyright, confidence, privacy or any other rights or scanning software;
- 4.11.2 to distribute illegal, copyright infringing, indecent or offensive material;
- 4.11.3 to send or procure the sending of any unsolicited e-mail; or
- 4.11.4 in an unlawful manner or for any illegal purpose.

5. Fees, Payment and Records

- 5.1 The Client shall pay the Fees to the Company in accordance with the provisions of the Contract Particulars as consideration for the IT Support provided by the Company in accordance with the terms and conditions of this Agreement.
- 5.2 All fees required to be made pursuant to this Agreement shall be paid in advance by Direct Debit on the 28th Day of each month and in the case of the first payment within 7 days of the date of this Agreement. Payment shall be made to a bank account that the Company may from time to time nominate, without any set-off, withholding or deduction.
- 5.3 Where any payment pursuant to this Agreement is required to be made on a day which is not a Business Day, it may be made on the next following Business Day.
- 5.4 If either Party fails to pay on the due date any amount which is payable to the other pursuant to this Agreement then, without prejudice to and notwithstanding *Clause 10.2*, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at a rate of 5% per annum over Barclays Bank Plc base rate from time to time in force.
- 5.5 If the Client fails to make payments for IT Support received, the Company reserves the right to terminate this Agreement with immediate effect. The Company will notify the Client before terminating the IT Support provided detailing when the services will be ceased.

6. Provision of the IT Support

- 6.1 The Company shall, throughout the Term of this Agreement, provide the IT Support to the Client in accordance with the terms and conditions of this Agreement.
- 6.2 The Company shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the IT Support.
- 6.3 The Company shall use all due and proper care to ensure that the manner in which it provides the IT Support does not have any adverse effect on the name, reputation, image or business of the Client.

7. Support Service and Agreement Monitoring

- 7.1 The Client and the Company shall arrange meetings between the Client's Representative and the Company's Representative at regular intervals in order to discuss the provision of the IT Support.
- 7.2 No later than 3 months prior to the end of the current Term of this Agreement, the Parties shall conduct an Agreement Review during which the continuance and renewal of this Agreement shall be determined. In the event that a renewal of the Agreement is agreed upon, the provisions of *Clause 2.2* shall apply.
- 7.3 In the event that changes to this Agreement are required due to circumstances including, but not limited to, legislative or regulatory change, either Party shall have the right to call for an immediate Agreement Review to discuss the necessary changes and action to be taken. Any changes agreed upon during such Agreement Reviews shall not be effective unless evidenced in writing and signed by the duly authorised representatives of the Parties.

8. Confidentiality

- 8.1 Each Party undertakes that, except as provided by *sub-Clause 8.2* or as part of normal working practices or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 12 months after its termination:
 - 8.1.1 keep confidential all Confidential Information;
 - 8.1.2 not disclose any Confidential Information to any other person;
 - 8.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms and conditions of this Agreement;
 - 8.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 8.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of *sub-clauses 8.1.1 to 8.1.4* above.
- 8.2 Either Party may:
 - 8.2.1 disclose any Confidential Information to:
 - 8.2.1.1 any sub-contractor or supplier of that Party;
 - 8.2.1.2 any governmental or other authority or regulatory body; or
 - 8.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies; to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in *sub-Clause* above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this *Clause 8* to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
 - 8.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.

- 8.3 The provisions of this *Clause 8* shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

9. Termination

- 9.1 This Agreement shall come into effect on the Commencement Date stated on the Contract Particulars and shall continue in force for the duration of the term and will then be subject to at least 90 days prior written notice by either party.
- 9.2 Either Party may forthwith terminate this Agreement by giving written notice to the other Party if:
 - 9.2.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 28 days of the due date for payment;
 - 9.2.2 the other Party commits any other material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 28 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 9.2.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 9.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 9.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the other Party under this Agreement);
 - 9.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 9.2.7 the other Party ceases, or threatens to cease, to carry on business; or
 - 9.2.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this *Clause 9*, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 9.3 The right to terminate this Agreement given by this *Clause 9* shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

10. Post-Termination

- Upon the termination of this Agreement for any reason:
- 10.1 any sum owing by either Party to the other Party under any of the provisions of this Agreement shall become immediately due and payable;
 - 10.2 any rights or obligations to which any of the Parties to this Agreement may be entitled or be subject before its termination shall remain in full force and effect where they are expressly stated to survive such termination;
 - 10.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which either Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
 - 10.4 subject as provided in this *Clause 10*, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other;
 - 10.5 each Party shall return to the other Party any materials in which the ownership has not been transferred to that other Party which have, for any reason, been provided for the purposes of this Agreement; and
 - 10.6 each Party shall (except to the extent referred to in *Clause 8*) forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party any documents in its possession or control which contain or record any Confidential Information.

11. Force Majeure

Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the reasonable control of the Party in question.

12. Nature of the Agreement

- 12.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 12.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.3 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 12.4 At any time after the date hereof each of the Parties shall, at the request and cost of the other Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring

the full benefit of all the provisions of this Agreement.

13. Severance

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

14. Relationship of the Parties

- 14.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other Party for any purpose.
- 14.2 Subject to any express provisions to the contrary in this Agreement, the Company shall have no right or authority to, and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Client or bind the Client in any way.

15. Notices

- 15.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 15.2 Notices shall be deemed to have been duly given:
- 15.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal Business Hours of the recipient; or
- 15.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- 15.2.3 on the fifth Business Day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 15.2.4 on the tenth Business Day following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

16. Law and Jurisdiction

- 16.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 16.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

17. Suspension

- 17.1 The Company reserves the right to suspend provision of any part of the IT Support where:
- 17.2 the Client's use of any of the IT Support is found to be monopolizing the resources available (this policy is only implemented in extreme circumstances and is intended to prevent misuse of the Services); or
- 17.3 suspension is required for maintenance, repair or upgrade of any Company systems, Services and or Products (the Company shall use reasonable endeavours to give as much advance notice to the Client as is reasonably practicable in the circumstances); or
- 17.4 dealing with any actual or suspected security breach, virus, or attack or any misuse by any person of any Company systems, Services and or Products; or
- 17.4.1 necessary because of an emergency; or
- 17.4.2 required by any regulatory, governmental or other competent authority; or
- 17.4.3 the IT Support depends on any Third Party Services and that Third Party Service is suspended by the relevant Third Party Services Provider; or
- 17.4.4 the Client fails to pay any Fees in accordance with the provisions of the Agreement and fails to rectify such failure within seven days of a written request from the Company requiring the same to be rectified.
- 17.5 The Company may from time to time close down the whole or part of the network for routine repair or maintenance work. The Company shall give as much notice as in the circumstances is reasonable and shall endeavour to carry out such works during the scheduled maintenance periods as published by the Company as appropriate.
- 17.6 The Client's internal network configuration and any equipment that it uses with the IT Support, Services and or Products that are not the Company's Equipment remains the responsibility of the Client. Any interruptions to the IT Support that occur as a result of an internal configuration or equipment issue may not be deemed as an interruption or suspension of the formal provision of the IT Support and the Company shall have no liability in this respect.

18. Liability

- 18.1 The Company shall not be liable for any loss or damage of whatsoever nature suffered by the Client arising out of or in connection with any breach of this Agreement by the Client or any act, misrepresentation, error or omission made by the Client or on the Client's behalf.
- 18.2 The Company will not be liable for
- 18.2.1 any indirect loss;
- 18.2.2 consequential loss;
- 18.2.3 loss of profit;
- 18.2.4 loss of revenue
- 18.2.5 loss or corruption of data; and
- 18.2.6 loss of goodwill
- howsoever arising suffered by the Client or for any wasted management

time or failure to make anticipated savings or liability the Client incurs to any third party arising in any way in connection with this Agreement or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.

- 18.3 No matter how many claims are made and whatever the basis of such claims, the Company's maximum aggregate liability to the Client under or in connection with this Agreement in respect of any direct loss (or any other loss to the extent that such loss is not excluded by other provisions in this Agreement) whether such claim arises in contract or in tort shall not exceed a sum equal to the fees paid by the Client for the IT Support in relation to which the Client's claim arises during the 12 month period prior to such claim.
- 18.4 None of the clauses herein shall apply so as to restrict liability for death or personal injury resulting from the negligence of the Company, its employees or its sub-contractors.
- 18.5 The Company shall not be liable for any interruptions to the IT Support or outages arising directly or indirectly from:–
- 18.5.1 interruptions to the flow of data to or from the internet;
- 18.5.2 changes, updates or repairs to the network or software which it uses as a platform to provide the IT Support;
- 18.5.3 the effects of the failure or interruption of Services provided by third parties;
- 18.5.4 factors outside of the Company's reasonable control;
- 18.5.5 The Client's actions or omissions (including, without limitation, breach of the Client's obligations set out in the Agreement) or those of any third parties;
- 18.5.6 problems with the Client's and/or third party equipment;
- 18.5.7 interruptions to the IT Support requested by the Client.