

# TERMS AND CONDITIONS

## 1. Definitions

- 1.1 Business Day: A day between Monday and Friday and the hours of 9am and 5pm inclusive on which clearing banks are open in the City of London. Commencement Date: As stated on the Service Level Agreement or date service is supplied, whichever is the soonest. These conditions shall be binding on the Customer when services are supplied whether or not the Customer has executed the Contract. Contract: The Service Level Agreement and these terms and Conditions. Customer: The person purchasing a Service Level Agreement including its agents, servants and representatives. Default: Any act, representation or omission by Cube Technology its officers, employees or agents which is done, made or not done (as the case may be) as a result of any act, representation or omission of any of them (whether deliberate or negligent), in connection with or in relation to this Contract as a result of which Cube Technology is legally liable to the Customer or any third party whether in contract, tort or otherwise. A number of Defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such Default. Goods mean the hardware and/or software sourced via Cube Technology. Products: The Supported Product and any loan product. Service Hours: Those hours outlined in the Service Level Agreement Service Level Agreement: The contract for the Support Level Services. Support Level Services: "Pay As You Go", "Prepay", or any other level that Cube Technology may from time to time introduce as set out in the Service Level Agreement. Supported Products: Those products outlined in the Service Level Agreement Term: The period outlined on the Service Level Agreement.
- 1.2 Payment Terms All invoices are payable upon receipt of the date of the Invoice without deduction, set off or counterclaim. If the payment is not made within fourteen (14) days the Customer Company may be required to pay interest on the amount Due under invoice at 3% above Bank of England base rate from time to time. Membership commences upon full receipt of membership fee. Service will not begin until payment of contract, (agreed payment terms, i.e., monthly, quarterly, bi-yearly, yearly.) is paid. All amounts payable under the Contract are expressed exclusive of value added tax ("VAT") and VAT be paid at the rate applying at the date of Cube Technology's invoice.
- 1.3 Admin Charges Within the membership fee, an admin charge of £30.00 is applicable to PC's and £60.00 to servers. Admin charges are payable at the start of the contract and are non-refundable.
- 1.4 Where Goods are sourced via Cube Technology, title to Goods supplied shall pass to the Customer upon payment in full in accordance with clause 1.2; until such time Goods shall be stored at specified Customer's premises at the Customer's cost as bailee for Cube Technology in a manner acceptable to Cube Technology and in accordance with manufacturer's instructions and in such a way that they are clearly identifiable as being Cube Technology's property. The risk in the Goods shall pass to the Customer at the time of delivery of the Goods into the possession of the Customer, its agent or carrier

## 2. Formation of Contract

- 2.1 All Service Level Agreements purchased are subject to these terms and conditions. No terms or conditions put forward by the Customer shall be binding on Cube Technology. No amendments to or variation of this Contract are effective unless they are in writing and signed by a duly authorised officer of Cube Technology.
- 2.2 The Customer acknowledges that Cube Technology' Service Level Agreement and these terms and conditions constitute the entire subject matter of the Contract and that there are no other representations, warranties, conditions, terms or obligations, whether written or oral, express or implied, by custom or otherwise.
- 2.3 Where loan products are supplied Cube Technology grants the Customer a non-transferable, non-exclusive licence to use the software or material for its internal business purposes but not further or otherwise.

## 3. Charges

- 3.1 In consideration of the Customer's payment for the Support Level Services, Cube Technology shall provide these services in respect of the Supported Products.

## 4. Term

- 4.1 This agreement shall commence on the Commencement Date and shall continue for the Term unless terminated earlier in accordance with these terms and conditions.

## 5. Delivery and installation

- 5.1 All Service Hours are estimates only and, while Cube Technology will use all reasonable efforts to avoid delay, Cube Technology shall under no circumstances whatsoever be liable to the Customer for any loss or damage whether direct, indirect or consequential, arising from delay in the performance of the Contract.
- 5.2 If Cube Technology is unable to perform the whole or part of the Contract due to any cause or event beyond its reasonable control including (without limitation) acts of God, acts of government, delays in transportation, industrial action, severe weather, default of suppliers or any other such cause or event whatsoever Cube Technology may, at its option, by notice in writing to the Customer, cancel or suspend the Contract in whole or in part without liability and without prejudice to Cube Technology rights to receive payment of the price of all work already done.
- 5.3 Cube Technology will use its reasonable endeavours to satisfactorily resolve or circumvent any reported problems in respect of the defective or faulty Products but no representation, guarantee or warranty is made by Cube Technology as regards the turnaround time for solving these problems or the nature of the suggested solution for solving such problems and the Customer understands that a solution may not be found by Cube Technology
- 5.4 The Customer shall ensure that:
- 5.4.1 A fixed date and time for the service is agreed with Cube Technology;
- 5.4.2 Cube Technology delivery vehicles and team have continuous unimpeded access to the site during a technical visit.
- 5.5 Any Customer-imposed delays in the Support Level Service outside of Cube Technology control shall be charged to the Customer at Cube Technology then current day work rates.

## 6. Warranty

- 6.1 Cube Technology shall use all reasonable skill and care in providing the Support Level Services and shall at the customer's reasonable request provide such services in accordance with the level of support paid for by the Customer.
- 6.2 The Customer shall return all warranty cards and execute all licenses with the manufacturers of all and any hardware and software provided by Cube Technology under the Contract.
- 6.3 Cube Technology shall be under no liability for defects in any third party Goods sourced via Cube Technology save to the extent that Cube Technology recovers any loss or damage from the supplier/manufacturer. Where applicable, Cube Technology shall use reasonable care to transfer to the Customer any third party terms, guarantees and warranties and Cube Technology's obligations shall not extend further than the terms of the foregoing third party terms, guarantees and warranties under any circumstances. In this respect the Customer is deemed to have made itself familiar with and be satisfied with such terms, guarantees and warranties.

## 7. Exemptions and Limitations

- 7.1 The following clause specifies the extent to which Cube Technology will be liable for Default. Its principal terms are a financial limit on Cube Technology liability (except for death or personal injury), the liability of Cube Technology only for certain defined losses and a time limit applicable to both parties for the enforcement of claims. Cube Technology entire liability and the Customer's sole remedies, whether in contract, tort or otherwise, shall be as set out in clause 7.
- 7.2 The Customer accepts that it is its responsibility to select how the Support Level Services meet its specific requirements.
- 7.3 Except as expressly provided in the Contract, all conditions, representations and warranties (express or implied, statutory or otherwise) are excluded to the extent permitted by law including without limitation any implied warranties or conditions as to quality, fitness for purpose or reasonable care.
- 7.4 Clause 6.1 shall not apply where
- 7.4.1 The Supported Products are not used in accordance with the instructions of the manufacturer or Cube Technology;

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- 7.4.2 The Supported Product is altered, modified or converted by the Customer or a third party;
- 7.4.3 A malfunction in the system resulting from a malfunction of a third party's or the Customer's equipment or software;
- 7.4.4 The Supported Product is no longer a version or release that is being generally support by Cube Technology.
- 7.5 The Customer shall always inform Cube Technology of any Default and afford it a reasonable opportunity of correcting that Default including, without limitation, the option of replacing the Products or correcting any defect in the same.
- 7.6 Cube Technology shall not be liable for any loss incurred:
- 7.6.1 After the date Cube Technology corrects the Default;
- 7.6.2 30 days after the date of the Default;
- 7.6.3 To the extent that Cube Technology affords the Customer a reasonable opportunity to mitigate its losses, damage, liabilities or expenses by providing alternative or additional Products.
- 7.7 Cube Technology will accept unlimited liability for death or Personal injury caused by Cube Technology Default.
- 7.8 Cube Technology will accept liability for direct physical damage to tangible property of the Customer resulting from Default, subject to clause
- 7.9 Cube Technology will not be liable for the following loss or damage however caused and even if foreseeable by Cube Technology:
- 7.9.1 Economic loss, which term shall include loss of profits, loss of use of profits, business, revenue, goodwill or anticipated savings;
- 7.9.2 Loss of or damage to the Customer's or a third party's data;
- 7.9.3 Special, indirect or consequential loss (other than direct physical damage to tangible property under clause 7.8);
- 7.9.4 Loss arising from any claim made against the Customer by a third party; or
- 7.9.5 Loss or damage arising from the Customer's failure to fulfil its responsibilities, or accept Cube Technology advice, or any matter under the control of the Customer or a third party; or
- 7.9.6 Loss or damage arising from Cube Technology acting in accordance with the instructions of the Customer, its officers, employees, agents or third parties engaged by the Customer..
- 7.10 Cube Technology entire liability for actual damages in respect of any one Default shall not, in any event, except as provided in clause 7.7, exceed the total purchase price for the Support Level Service, which is directly related to the Default.
- 7.11 Except in respect of payments due under this agreement and claims under clause 7.7 no action may be brought by either party against the other more than two years after the cause of action has accrued.
- 7.12 The Customer agrees to indemnify Cube Technology against all actions, proceedings, claims and demands in any way connected with the Contract or the Supported Products brought or threatened against Cube Technology by a third party except to the extent that Cube Technology is liable to the Customer for a Default.
- 7.13 The Customer acknowledges that:
- 7.13.1 The price for the Support Level Services has been calculated on the basis that Cube Technology excludes and/or limits its liability to the Customer in accordance with this agreement;
- 7.13.2 That the exclusions and limitations contained in this agreement are fair and reasonable in all the circumstances known at the date of this agreement;
- 7.13.3 It is not possible to foresee and provide in the agreement (in particular by way of adjustments to the price of the materials) for all contingencies, which may give rise to loss, damage or liability.
- 7.13.4 Each of the limitations and exclusions set out above is to be construed as a separate limitation or exclusion, applying and surviving even if for any reason one or other of the limitations or exclusions is held inapplicable or unreasonable in any circumstances, and shall remain in force despite termination of this agreement.
- 8. Assignment**
- 8.1 The Customer shall not assign or otherwise seek to transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior consent of Cube Technology.
- 8.2 Cube Technology may assign or subcontract all or part of the Support Level Services to whomever in Cube Technology reasonable opinion is qualified to provide the services.
- 9. Confidentiality**
- 9.1 Cube Technology shall exercise all reasonable care in keeping information supplied by the Customer confidential and preventing access thereto by unauthorised persons, but shall have no liability for any failure in this connection.
- 10. Waiver**
- 10.1 Cube Technology failure to insist upon the strict performance of any of the Customer's obligations under the Contract shall not be construed as a waiver and shall not affect Cube Technology rights to require strict performance of such obligations.
- 11. Costs of Enforcement**
- 11.1 The Customer shall pay to Cube Technology all expenses, including cost of employee's time and legal costs on a full indemnity basis, incurred by or on behalf of Cube Technology in enforcing the provisions of this Contract.
- 12. Headings**
- 12.1 Headings to the clauses in this Contract are for ease of reference only and shall not affect the construction of this Contract.
- 13. Severability**
- 13.1 If any provision of this Contract or part thereof is found to be invalid or unenforceable, the invalidity or unenforceability of such provision or part shall not affect any other provision or the remainder of the provision in which such invalid or unenforceable part is contained, which shall remain in full force and effect.
- 14. Notices**
- 14.1 Any notice pursuant to the Contract shall be in writing signed by (or by some person duly authorised by) the person giving it and may be served by leaving it at or sending it by fax or electronic mail, recorded delivery or registered post to the appropriate address set out herein or such address as shall be notified from time to time.
- 14.2 Any of the foregoing correspondence shall be deemed to have reached the party to whom it is addressed as follows:
- 14.2.1 By mail within the United Kingdom - 2 Business Days after posting;
- 14.2.2 By mail outside the United Kingdom - 7 Business Days after posting;
- 14.2.3 By hand - at the actual day and time of receipt;
- 14.2.4 By fax or electronic mail - one hour after the time of transmission, save that in the case of hand delivery, fax or electronic mail delivery which otherwise would be deemed to be after 5 p.m. on a Business Day or on a day which is not a Business Day shall be deemed to be delivery at 10 a.m. on the next Business Day thereafter.
- 14.3 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter or that the telex or facsimile message was properly addressed and despatched to the correct number as the case may be.
- 15. Termination**
- 15.1 The contract runs for 1 year at a time and will be renewed annually unless a minimum of 2 months written notice of termination is provided by either party. No refund of advance payments shall be made.
- 15.2 Upon the occurrence of an event of Default or at any time thereafter for so long as the event of Default is continuing, Cube Technology shall be entitled to serve a notice to terminate.
- 16. Staff transfer**
- 16.1 During the Contract and for a further twelve months following the termination of the Contract (for whatever reason) the Customer shall not employ or engage directly or indirectly, (without Cube Technology's prior written agreement) nor make or seek to make any offer of employment or engagement to any Cube Technology staff, including any of its sub-contractors, who have dealt with the Customer in the course of the negotiation, conclusion and performance of the Contract.
- 17. Governing Law**
- 17.1 This Contract shall be governed by and construed in accordance with English law and the parties hereto irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any dispute or matter arising out of it.