

## Gower Business Systems – Terms & Conditions of Trading

These terms and conditions apply to the sale of goods, provision of licences and maintenance (as applicable) by Gower Business Systems Ltd (GBS) of any computer hardware or software or other similar or associated items or materials. These terms are divided into four parts; Sales, GBS System Care Maintenance, Services and General. The General Terms apply to all contracts of GBS. The remaining terms apply depending upon the service to be provided by GBS.

### Definitions

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

**Call** - Communication received by GBS from the Customer reporting a defect or malfunction in the Equipment.

**Charges** - The sums payable by the Customer to GBS for the GBS System Care Maintenance, as set out in the Scope of Service.

**Confidential Information** - Any trade secrets or confidential or proprietary information of either party, including these Terms, but excluding any information:

- (a) in the public domain otherwise than by a breach of the Contract;
- (b) which, prior to disclosure, was already known by the recipient;
- (c) that the other party develops independently of or to any information that is disclosed to it under the provisions of the Contract; or
- (d) which is subsequently disclosed to the recipient by a third party at liberty to disclose it.

**Contract** - The contract between the Customer and GBS for the sale of Goods and/or the GBS System Care Maintenance in accordance with these Terms.

**Customer** - The Person, Partnership, Firm or Company who accepts GBS's written quotation for the sale of the Goods and/or the supply of the GBS System Support Services or whose written or verbal order in respect thereof is accepted by GBS.

**Engagement** - The employment, hire or other use, directly or indirectly and whether as an employee or on a self employed basis.

**Equipment** - All or part of the network, hardware, software and Third Party Software as specified or identified in the Scope of Service or Schedule.

**'Company' or 'Gowerbiz' or 'GBS'** - Gower Business Systems Ltd, 2 New Mill Court, Enterprise Park, Swansea SA7 9FG.

**Goods** - The computer hardware, software and related equipment which GBS is to supply in accordance with these Terms.

**Commencement Date** - The date upon which this Agreement shall become effective.

**Initial Term** - The fixed period for which the GBS System Care Maintenance is to be provided as specified in the Scope of Service.

**Installation Address** - The address specified in the Scope of Service at which the Equipment is located or such other address as may be agreed in writing by GBS

**Liability** - Any liability arising by reason of any representation (unless fraudulent), or any breach of any implied warranty, conditions or other term or any duty at common law, or under any statute, or under any express term of this Contract.

**Loss** - In relation to the Customer means loss of profit (or any other loss), damages, costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, howsoever arising and whether by reason of negligence of GBS, its employees, its agents or otherwise.

**Normal working hours** - 09:00 to 17:00 Monday to Friday but excluding bank or statutory holidays.

**Operating Platform** - The complete configuration of hardware, ancillaries/accessories and operating system for an item of Equipment.

**Personnel** - Any employee, agent, consultant and/or sub-contractor of the party concerned.

**Scheduled Service Hours** - The times during which GBS will endeavour to provide the GBS System Care Maintenance as specified on the Scope of Service.

**Scope of Service** - The Schedule signed by the Customer setting out details of the Equipment, response times and other information in respect of the GBS System Care Maintenance.

**Site** - The Customer's site where the equipment is held.

**Working Hours** - between 09.00 and 17.00 on Monday to Friday inclusive, excluding any public or bank holidays.

**GBS System Care Maintenance** - The provision of a maintenance service for the Equipment together with proactive support as set out in the Scope of Service.

**ITC** – Information Technology and Communications

## **PART 1 – SALE OF GOODS**

### **The following terms and conditions in this Part 1 apply to the sale of Goods by GBS**

#### **1.1. Formation of Contract**

- 1.1.1 GBS will sell and the Customer will buy the Goods in accordance with GBS's written quotation/proposal (if accepted by the Customer) or the Customer's written or verbal order (if accepted by GBS) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by GBS unless GBS confirm this in writing. Any Prior indications by GBS made verbally shall be provisional only
- 1.1.2 All orders are accepted subject to the availability of goods and to these Conditions. No terms or conditions put forward by the Company shall be binding on GBS unless accepted by GBS in writing.
- 1.1.3 If the Customer requests a change or cancellation of any order GBS reserves the right to reject the change or cancellation or accept it. No cancellation will be accepted in respect of orders for items not normally stocked by GBS.
- 1.1.4 Unless otherwise expressly agreed in writing the goods shall be sold and invoiced at GBS current prices at the date of despatch. Catalogues, price lists, videos and other advertising materials are provided for illustrative purposes only.
- 1.1.5 Unless otherwise agreed in writing prices do not include delivery and taxes (if any) and such costs shall be payable by and invoiced to the Customer.
- 1.1.6 All quotations are valid only on the data given and all quotations and prices are based on details provided by the Customer and do not apply where the Customer alters the details on which such quotations and prices are based. GBS reserve the right to charge for any omission or additional cost arising from the provision of inaccurate or insufficient information by the Customer and to revise prices to take into account increases in any costs of providing the goods which occurs between the date of quotation and delivery.
- 1.1.7 GBS reserve the right to cancel any contract made with the customer at any time up to the point of payment and have access to the customer's premises to collect any goods delivered.

#### **1.2. Accuracy of Order**

- 1.2.1 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer.

#### **1.3. Software**

- 1.3.1 All software, whether supplied, installed or implemented is provided within the terms and conditions and licence of the software provider.
- 1.3.2 If the software comprised in the Goods is not owned by GBS then the Customer will be required to enter into an end-user licence agreement with the owner of the software concerned.
- 1.3.3 If any software has to any extent been written or developed by GBS then subject to clause 1.3.2 above, GBS hereby grants a non-exclusive, non-transferable licence for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of GBS and no title or ownership thereof will be transferred to the Customer.

#### **1.4. Delivery**

- 1.4.1 Delivery of the Goods will take place by GBS or their suppliers delivering the Goods to the place agreed in writing with the Customer.
- 1.4.2 Any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the contract. GBS will not be liable for any loss or damage (howsoever arising) to the Customer should GBS be unable to deliver the Goods within the quoted period.
- 1.4.3 GBS is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.
- 1.4.4 If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by GBS to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.
- 1.4.5 The Customer shall note any claim for short delivery and/or damage to components or packaging on the delivery schedule at the time of delivery and shall confirm such claims in writing to GBS within 7 days from the date of delivery. All goods are deemed delivered and completed if such notice is not received within such period.

#### **1.5. Transfer of Property and Risk**

- 1.5.1 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until GBS has received payment in full of the price of the Goods and all other goods agreed to be sold or services to be provided by GBS to the Customer for which payment is then due.
- 1.5.2 Until title in the Goods has passed to the Customer, GBS will be entitled at any time to require the Customer to deliver up the Goods to GBS and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

- 1.5.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as GBS's fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as GBS's property.
- 1.5.4 Title of the goods remains with GBS While any amount outstanding remains outstanding to GBS from the Company.

#### **1.6. Installation**

- 1.6.1 Where GBS's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by GBS) specifies installation of the Goods or GBS otherwise undertakes any such installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure and suitable electrical supply. If GBS is prevented or delayed from carrying out the installation through no fault of GBS then GBS is entitled to charge the Customer at GBS's then current prices for any additional works carried out by or on behalf of GBS to enable it to complete the installation and/or for compensation for any losses or costs incurred by GBS by reason of such delay.

#### **1.7. Warranty**

- 1.7.1 The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 90 days from the date of delivery by GBS. The Customer must within the said period of 90 days notify GBS in writing of any such defects and permit GBS to inspect the Goods as required by GBS. If the Customer does not so notify then the Customer will not be entitled to reject the Goods and GBS will have no liability for such defect.
- 1.7.2 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by GBS and does not apply to any Goods that have been repaired or modified by anybody other than GBS.
- 1.7.3 If a valid claim is notified under clause 7.2 above then GBS may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part) in which case GBS will have no further liability to the Customer.
- 1.7.4 The Company acknowledges that software products are by their nature susceptible to imperfections in operation and subject therefore to the foregoing provisions of this Clause 7 no warranty is given in relation to software products.

#### **1.8 RETURNS AND TRADE IN OFFERS**

- 1.8.1 All goods shall be deemed accepted unless rejected by notice in writing to GBS within 7 days of delivery or collection of the goods. Any such notice shall give detailed reasons for such rejection.
- 1.8.2 Any payment, credit or refund following return of such rejected goods to the company shall only be given once the same has been received by GBS from manufacture, supplier or insurer as the case may be.
- 1.8.3 Before returning any goods which have been rejected in accordance with clause 8.1 the Customer shall comply with GBS returns procedure and in particular but without limitation shall obtain from GBS a designated returns label which will contain an identification number and which shall be affixed by the Customer to the packaging of the goods to be returned in a prominent position. The issue of the return label is solely for administrative purposes and shall not be taken as an admission of any fault and/or liability whatsoever on the part of GBS in relation to the goods being returned.
- 1.8.4 No goods shall be returned without GBS prior approval and GBS reserves the right to repair goods rather than accept their return.
- 1.8.5 Where goods are returned in connection with a trade-in-offer from the manufacturer GBS will accept such goods as agent for the Customer at the Customer's risk and expense.

#### **1.9 PRODUCT CHANGES**

- 1.9.1 GBS will use its reasonable endeavours to inform the Company of any alterations made by the manufacturer to the specification of goods.
- 1.9.2 GBS shall be entitled to substitute an alternative product of equivalent functionality and at the same price or to cancel any orders for goods which have been declared end of life by the manufacturer subject to customer's agreement.

#### **1.10 TRADEMARKS, PATENTS AND COPYRIGHTS**

- 1.10.1 The Company recognises the manufacturer's ownership of and title to all trademarks, service marks, trade names, patents, copyright and intellectual property rights.
- 1.10.2 The Company will take no action to violate, obliterate, remove, alter, conceal or misuse any such marks, trade name or copyright notice.
- 1.10.3 The Company will promptly notify GBS if it becomes aware of any infringement of such intellectual property rights by any third party and shall provide its reasonable assistance to GBS and/or the manufacturer in connection with any resultant proceedings.

## **PART 2 – PROVISION OF GBS SYSTEM CARE MAINTENANCE SERVICES**

**The following terms and conditions apply to the maintenance service described in the Scope of Service to be provided for the Equipment specified in the Scope of Service (“the GBS System Care Maintenance”)**

***This section is supplemented by: ‘Terms for Telecoms Support, and ‘Terms for Computer Equipment Support’ which are available at [www.gowerbiz.co.uk](http://www.gowerbiz.co.uk).***

### **2.1. GBS Responsibilities**

- 2.1.1 GBS will provide the GBS System Care Maintenance during their normal working hours (meaning between 9.00 hours and 17.00 hours, Monday to Friday excluding statutory and bank holidays). If the customer requires services outside of normal working hours and GBS agrees to provide such services, then the cost of supplying these hours shall be charged for separately at the then out of hour’s rate. The customer agrees to discharge such invoices within 30 days of receipt of the same.
- 2.1.2 The agreement will cover any number of emergency calls, all labour, travel & fares in the South Wales Region related to the equipment covered in the contract. Travel outside South Wales will be charged at 35p per mile plus reasonable accommodation & subsistence costs if necessary.
- 2.1.3 GBS will, subject to these Terms, provide the GBS System Care Maintenance in accordance with any terms set out in the Scope of Service.
- 2.1.4 GBS, unless otherwise agreed, will use their best endeavours to respond to any logged calls within the response time of 8 working hours by telephone, remote access or site visit but this is not guaranteed. Priority is given to calls in relation to their effect on a company, department or individual.
- 2.1.5 GBS will use its reasonable endeavours to rectify defects or malfunctions in the Equipment on the telephone or by use of remote access where provided by the Customer.
- 2.1.6 If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, GBS will use its reasonable endeavours to visit the Installation address set out in the Scope of Service.
- 2.1.7 When carrying out work in accordance with these Terms, GBS will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer’s applications supplied by GBS at no extra cost. Reinstatement of applications not supplied by GBS will be charged on a Time & Materials basis.
- 2.1.8 GBS may at its discretion provide a permanent replacement part for the Equipment, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of GBS.
- 2.1.9 GBS may repair the Equipment away from the Installation Address when it considers it necessary to do so.
- 2.1.10 GBS may at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Equipment loaned to the Customer remains GBS’s property and will be returned to GBS on demand. The Customer is entirely responsible for such equipment and will indemnify GBS in respect of any loss or damage to that equipment.
- 2.1.11 GBS may make use of new releases, patches and updates of Third Party Software to rectify known problems where this is permitted under the applicable software licence agreement.
- 2.1.12 Where GBS is required to carry out or does carry out work that is subsequently found to be outside GBS System Care Maintenance, GBS will be entitled to charge for that work at GBS’s then current rates.

### **2. Term**

- 2.2.1 GBS System Care Maintenance will commence on the date set out in the Scope of Service and, subject to these Terms, unless and until either party serves at least one month’s prior written notice of termination on the other expiring on the date of expiry of the Initial Term or any anniversary thereafter.

### **3. Period of Availability**

- 2.3.1 GBS will only provide GBS System Care Maintenance during the Scheduled Service Hours. If the Customer requests GBS to carry out any GBS System Care Maintenance outside the Scheduled Service Hours then, GBS will use its reasonable endeavours to comply with this request but will charge the Customer for such services at GBS’s then current rates.
- 2.3.2 The time taken by GBS to respond to a Call will only be measured during the Scheduled Service Hours.

### **4. Customer Responsibilities**

- 2.4.1 The Customer will keep the Equipment in the environmental conditions recommended by the Equipment manufacturer and ensure that the external surfaces, cables and fittings of the Equipment are kept clean and in good condition.
- 2.4.2 The Customer will ensure that the Equipment is only used by properly trained staff in accordance with the manufacturer’s user instructions, current computing practice and instructions issued by GBS from time to time.
- 2.4.3 The Customer will ensure that only personnel authorised by GBS adjust, modify, configure, maintain, repair, replace or remove any part of the Equipment.
- 2.4.4 The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide GBS with such information and assistance concerning the Equipment, its application, use, location and environment as GBS may reasonably require enabling it to carry out the GBS System Care Maintenance.

- 2.4.5 The Customer will immediately notify GBS if there is any failure of the Equipment and will allow GBS full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the GBS System Care Maintenance.
- 2.4.6 The Customer will ensure that relevant trained and experienced staff are available when required by GBS to provide GBS with information required by GBS to diagnose and/or repair the Equipment.
- 2.4.7 Where GBS provides remote diagnostic services in respect of the Equipment, the Customer will put and keep in place a remote access link to the Equipment which is acceptable to GBS.
- 2.4.8 The Customer must tell GBS in writing immediately that the Equipment or any part of it is changed.
- 2.4.9 The Customer will notify GBS of change in the location of any part of the Equipment. Whilst any Equipment is being moved, all GBS's obligations to provide the GBS System Care Maintenance will be suspended. The GBS System Care Maintenance will be reinstated following re-installation of the Equipment provided that the Equipment has not been damaged or affected during the move.
- 2.4.11 Unless specifically included in the Scope of Service, the Customer is responsible for the cost of any Third-Party Software upgrades which GBS advise are required.
- 2.4.12 It is the Customer's sole responsibility, in a manner acceptable to GBS, to operate and verify a proper back up routine, maintaining all back up copies in a secure environment such that they can and will be provided to GBS when required.
- 2.4.13 The Customer undertakes to put and keep in place adequate security measures to protect the Equipment and any other software or data from viruses, harmful code or unauthorised access.
- 2.4.14 The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Equipment.
- 2.4.15 The Customer shall provide safe and suitable working conditions in each location for GBS representatives.
- 2.4.16 The Customer shall ensure that proper environmental conditions are maintained for the hardware and shall maintain in good condition the accommodation of the hardware, the cables and fittings associated therewith and the electricity supply thereto.
- 2.4.17 The Customer shall make available to GBS such programs including releases and updates, operating manuals and information as may be necessary to enable Gower Business Systems Limited to perform its obligations hereunder and shall if requested by GBS provide staff familiar with the Customer's programs and operations, which staff shall upon request provide written descriptions of any failure or malfunction and co-operate fully with GBS personnel in the diagnosis of any malfunction of the hardware including the performance of such tests as GBS personnel may require.
- 2.4.18 The Customer shall insure any substitute units temporarily supplied to their full replacement value with a reputable insurance company and indemnify GBS for any loss or damage suffered by GBS as a result of loss or of damage to such units.

## **2.5. Proactive Support**

- 2.5.1 The Scope of Service will specify if GBS is to provide to the Customer any number of support visits during Normal Working Hours, the purpose of which is to provide general support in respect of the operation of the GBS System Care Maintenance.
- 2.5.2 The Scope of Service will specify if the Customer requires proactive remote monitoring of their server equipment at the GBS Offices. This service also includes weekly, monthly or annual analytical reports about the state of the server.

## **2.6. System Audit**

- 2.6.1 GBS will, as often as GBS thinks necessary and (save in the event of an emergency) upon reasonable notice carry out a System Audit within GBS's Normal Working Hours to confirm that, in GBS's opinion, the Equipment is in reasonable operating condition.

## **2.7. Service Exclusions**

- 2.7.1 The GBS System Care Maintenance does not extend to:
  - 2.7.1.1 any Equipment not specified or included in the Scope of Service including any part of the Equipment which is in any way changed from that included in the Scope of Service;
  - 2.7.1.2 any Equipment which was, in GBS's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of the GBS System Care Maintenance;
  - 2.7.1.3 any work arising as a result of any breach by the Customer of any of its obligations under these Terms;
  - 2.7.1.4 any work arising from any incident, wilful act or any error or omission in the operation of the Equipment or any other cause (except for wear and tear) which is not due to the neglect or default of GBS;
  - 2.7.1.5 any failure or defect caused by hardware or software not covered by these Terms;
  - 2.7.1.6 failures or defects due to manufacture or design defects over which GBS has no control;
  - 2.7.1.7 refurbishment or repair of casings or outer surfaces;
  - 2.7.1.8 any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Scope of Service;
  - 2.7.1.9 reinstatement of customised versions of the standard desktop operating system;
  - 2.7.1.10 reinstatement of the Customer's software and data not identified within the Scope of Service;
  - 2.7.1.11 any consultancy, training or software or hardware GBS may provide;
  - 2.7.1.12 integration of the Equipment or any part thereof with other systems;

- 2.7.1.13 cleansing of viruses, malware and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software.
- 2.7.1.14 upgrading the Operating Platform to be able to operate the Customer's selected software applications;
- 2.7.1.15 consumable supplies or accessories such as magnetic media, batteries, print heads, drums, fuser units, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the Scope of Service;
- 2.7.1.16 any Equipment in respect of which a notice has been served by GBS under clauses 8 or 9;
- 2.7.1.17 any work arising by reason of any maintenance or repair work carried out in respect of the Equipment by a third party not previously approved in writing by GBS;
- 2.7.1.18 in respect of any personal digital assistants or other mobile solutions comprised within the Equipment anything other than support of the Third Party Software to enable synchronisation to such server of the Customer as is specified in the Scope of Service.

## **2.8. Beyond Reasonable Repair**

- 2.8.1 GBS will give the Customer written notice if, in its reasonable opinion, the Equipment (or any part of it) is identified as "end of life", becomes beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary at which point any obligations of GBS to provide the GBS System Care Maintenance in respect of such equipment will be suspended. If the Customer declines to have the Equipment overhauled or replaced at its expense within thirty days of such notification, GBS may on written notice exclude such equipment from this Contract and refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period and will remove any loan equipment relating to the said equipment from the end of the notice period.
- 2.8.2 The provisions of clause 2.8.1 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of GBS, is no longer economically viable to maintain or requires upgrading or updating including obsolete operating systems that are no longer maintained by its authors.

## **2.9. Pre Inspection**

- 2.9.1 Prior to commencement of the GBS System Care Maintenance, GBS may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address to confirm that it is, in GBS's reasonable opinion, in full working order in accordance with the manufacturer's requirements. If work is required to put the Equipment in such full working order GBS will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, GBS may on written notice exclude such equipment from GBS System Care Maintenance and will refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

## **PART 3 - SERVICES**

**The following terms and conditions apply to all Services provided or to be provided to the Customer.**

### **3.1 Formation of Contract**

- 3.1.1 GBS will sell and the Customer will buy the Services in accordance with GBS's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by GBS) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by GBS unless GBS confirm this in writing.

### **3.2 GBS's obligations**

- 3.2.1 GBS shall use reasonable endeavours to provide the Services and to deliver the System to the Customer, in accordance in all material respects with the Functional Specification (if any), Proposal (if any) and/or Project Plan (if any).
- 3.2.2 GBS may at its discretion appoint a project manager to liaise with the Customer on all matters relating to the Services. GBS shall use reasonable endeavours to ensure that the same person acts as project manager throughout the provision of the Services, but may replace him from time to time where reasonably necessary in the interests of GBS's business.
- 3.2.3 GBS shall use reasonable endeavours to meet any performance dates or Project Milestones specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

### **3.3 Customer's obligations**

- 3.3.1 The Customer shall:
- 3.3.1.1 co-operate with GBS in all matters relating to the Services and appoint a project manager (or a suitably qualified member of staff), who shall have the authority to contractually bind the Customer on matters relating to the Services;
  - 3.3.1.2 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by GBS;
  - 3.3.1.3 provide in a timely manner such information and documentation as GBS may request, and ensure that such information and documentation is correct and accurate in all material respects;
  - 3.3.1.4 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and
  - 3.3.1.5 ensure in the interests of health and safety that GBS's personnel, while on the Customer's premises, are at all times familiar with the Customer's premises and safety procedures.
- 3.3.2 If GBS's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to GBS on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to GBS confirming such costs, charges and losses to the Customer in writing.

### **3.4 Change control**

- 3.4.1 The project managers shall meet on a regular basis to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 3.4.2 If either party requests a change to the scope or execution of the Services, GBS shall, within a reasonable time, provide a written estimate to the Customer of:
- 3.4.2.1 the likely time required to implement the change;
  - 3.4.2.2 any variations to GBS's charges arising from the change;
  - 3.4.2.3 the likely effect of the change on the Proposal and/or Project Plan; and
  - 3.4.2.4 any other impact of the change on the terms of the Contract.
- 3.4.3 If the Customer wishes GBS to proceed with the change, GBS has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Services, the relevant Proposal, Project Plan and any other relevant terms of the Contract to take account of the change. This will be set out in an addendum to the Functional Specification.
- 3.4.4 Notwithstanding clause 3.4.3 GBS may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 3.4.5 GBS may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with Clause 3.5.2.

### **3.5 Charges and payment**

- 3.5.1 Clause 3.5.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 3.5.3 shall apply if the Services are to be provided for a fixed price.
- 3.5.2 Where the Services are provided on a time-and-materials basis:
- 3.5.2.1 the charges payable for the Services shall be calculated in accordance with GBS's standard daily fee rates as amended from time to time;
  - 3.5.2.2 GBS's standard daily fee rates are calculated on the basis of a 7 hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays) either spent at the Customer's premises or at GBS's premises;
  - 3.5.2.3 GBS shall be entitled to charge overtime rate at its standard rates for time worked by members of the project team outside the hours referred to in clause 3.5.2.2;
  - 3.5.2.4 GBS shall invoice the Customer for its charges for time, expenses and materials (and VAT, where appropriate) either at the start of a project or monthly in advance for the month concerned.

- 3.5.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid by the Customer to GBS in instalments as set out in the Proposal on its achieving the corresponding Project Milestone. On achieving a Project Milestone, GBS shall invoice the Customer for the charges that are then payable, together with expenses and materials (and VAT, where appropriate) in accordance with clauses 3.7.1 and 3.7.2.

### **3.6 Intellectual Property Rights**

- 3.6.1 Intellectual Property Rights and all other rights in the System and any associated or other documentation produced as a result of the Services (other than the Third Party Software) shall be owned by GBS and the Customer shall have no right title or interest therein except as expressly set out in this Contract.
- 3.6.2 So long as the Customer shall have made all payments due under this Contract in accordance with its terms and subject to the terms of clause 1.3, GBS shall grant to the Customer a non-exclusive, non-transferable licence to such extent as is necessary to enable the Customer to make reasonable use of the System and the Services as is envisaged by the parties. If GBS terminates the Contract, this licence will automatically terminate.

### **3.7 Acceptance**

- 3.7.1 The Customer shall carry out the Acceptance Tests in accordance with the Project Plan and if the relevant Project Milestone passes the Acceptance Tests the Customer's project manager shall within 2 days from completion of the Acceptance Tests sign a User Acceptance Sign Off and send a copy to the GBS project manager confirming that the relevant Project Milestone has passed the Acceptance Tests. Once the GBS project manager has accepted the User Acceptance Sign Off, GBS shall invoice the Customer and commence to the next Project Milestone.
- 3.7.2 If GBS does not receive a User Acceptance Sign Off within 14 days of the date set out in the Project Plan for carrying out the Acceptance Tests, acceptance of the relevant Project Milestone will be deemed to have occurred and GBS will raise an invoice for the relevant Project Milestone.
- 3.7.3 Acceptance of the System shall be deemed to have occurred on whichever is the earliest of:
- 3.7.3.1 the signing by the Customer of a User Acceptance Sign Off for the final Project Milestone to pass the Acceptance Tests; or
  - 3.7.3.2 the use of the System by the customer in the course of its business.

## **PART 4 – GENERAL PROVISIONS**

**The following terms and conditions apply to all Equipment sold or to be sold and/or Software licensed or to be licensed and/or GBS System Care Maintenance provided or to be provided to the Customer.**

### **4.1. General**

- 4.1.1 These Terms may only be amended, or varied with GBS's agreement in writing. The parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any orders or other notifications submitted by the Customer.
- 4.1.2 Words of a technical nature used in these Terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.
- 4.1.3 Headings in these Terms are for convenience only and have no effect on the interpretation.
- 4.1.4 Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under these Terms or otherwise nor will any single or partial exercise thereof preclude any further or subsequent exercise.

### **4.2. Specification**

- 4.2.1 The description of any Goods contained in any invoice, order form, descriptive matter, specifications, catalogue or advertising material published or issued by GBS is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by GBS may be corrected by GBS without any liability on the part of GBS.
- 4.2.2 GBS reserve the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of the GBS System Care Maintenance provided that this does not materially affect the performance of the Goods or the GBS System Care Maintenance.

### **4.3. Prices**

- 4.3.1 Unless otherwise stated in writing, quotations are valid for 30 days from the date of issue and are exclusive of VAT and any other relevant taxes which are payable by the Customer in addition.
- 4.3.2 The Charges quoted in the Scope of Service for GBS System Care Maintenance are for the Initial Term only. The annual Charges payable for any subsequent 12 month period (excluding any additional payments due under these Terms) will be as notified by GBS to the Customer in writing at least 30 days before the commencement of such period.
- 4.3.3 All waiting time spent by any employees or agents of GBS (which includes any time which had been allocated to a Customer by GBS and which is not utilised by such Customer for any of the reasons set out in this clause) as a result of any delay, variation or failure by the Customer to comply with these Terms (which for these purposes includes any delays or postponements by the Customer of any installation dates specified by GBS, of dates of scheduled service visits or otherwise) will be payable by the Customer to GBS at GBS's then applicable hourly rate.
- 4.3.4 Unless otherwise expressly agreed in writing the goods shall be sold and invoiced at GBS current prices at the date of despatch. Catalogues, price lists, videos and other advertising materials are provided for illustrative purposes only.

### **4.4. Payment**

- 4.4.1 In respect of the GBS System Care Maintenance for the Initial Term the Customer will pay the Charges to GBS prior to the date(s) set out in the Scope of Service and thereafter annually in advance prior to the commencement of the GBS System Care Contract. Alternatively a Customer may pay by Monthly St. Order, with a 6% administration fee; in this case the contract is still an annual contract.
- 4.4.2 In respect of the sale of all other Goods and services:
  - 4.4.2.1 Payment will be made by the Customer within 7 days of invoice date or on the date(s) agreed in writing between the Customer and GBS at the point of order for the Goods or the requirement for services in accordance with these Terms.
  - 4.4.2.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required GBS may invoice the Customer at any time after the Goods become available.
  - 4.4.2.3 GBS may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.
  - 4.4.2.4 Any quantity discount given by GBS at the point of order may be removed if the order quantity is subsequently reduced.
- 4.4.3 If no payment date(s) has been agreed in writing in accordance with clauses 4.1 or 4.2.1 above then payment by the Customer will be made within 7 days after the date of GBS's invoice.
- 4.4.4 If any payments from the Customer under these Terms are payable by instalments, the Customer will pay such instalments in advance, by standing order, direct debit or such other method as GBS may agree, at the intervals agreed in writing with GBS.
- 4.4.5 If the Customer fails to make any payment due to GBS (whether under these Terms or otherwise) on its due date then GBS may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by GBS to the Customer or appropriate any money received from the Customer against such sums as GBS may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, GBS will be entitled to suspend the performance of any GBS System Care Maintenance in the event that there are any sums owing by the Customer in respect of any other goods and/or services provided by or on behalf of GBS to the Customer.

- 4.4.6 All payments due to GBS under these Terms will be paid in full without any set off, deduction, counterclaim or withholding of any sum for whatever reason.
- 4.4.7 GBS reserves the right to charge interest on the amount of any delayed payment at the rate of 4% over the base rate of Lloyds TSB Bank Plc from time to time per calendar month or part thereof on the outstanding amount until payment has been made in full.
- 4.4.8 The Customer shall indemnify in respect of all costs (including legal fees) reasonably occurred in attempting to recover such overdue amounts.
- 4.4.9 GBS reserves the right to require the Company to pay for goods in advance and to recharge or refuse discount if the Company fails to maintain credit account arrange satisfactory to GBS.
- 4.4.9 GBS shall be entitled at any time and from time to time to vary the service fee with effect from the next anniversary date. GBS shall advise the customer in writing prior to any variation prior to the anniversary.

#### **4.5. Lease**

- 4.5.1 If any payments due to GBS in respect of the Goods or the GBS System Care Maintenance is to be paid by a third party then the Customer agrees that immediately on delivery of the Goods the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as may be necessary to ensure that payment is made to GBS for the Goods and/or the GBS System Care Maintenance in accordance with these Terms.

#### **4.6. GBS Employees**

- 4.6.1 The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of GBS's representatives who visit any premises of or on behalf of the Customer;
- 4.6.2 The Customer will fully indemnify and hold harmless GBS from and against any claim for loss, damage or injury to any person or property occasioned by or arising directly or indirectly from any negligence or misuse of the Goods or the Equipment or any other breach of these Terms by or on behalf of the Customer.

#### **4.7 Liability**

- 4.7.1 Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of GBS for any fraudulent misrepresentation.
- 4.7.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.
- 4.7.3 The Customer accepts that in respect of the sale of the Goods, whilst GBS will endeavour to use its expertise and experience to advise the Customer, GBS is acting as a supplier only and it is the Customer's responsibility to ensure that the Goods will be suitable for its requirements and the Customer acknowledges that prior to the Contract it has fully and accurately advised GBS of its requirements in writing, both present and anticipated, in respect of the Goods.
- 4.7.4 If GBS is unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect then, the Customer's only remedy is to reject such Goods and on their return to GBS' s premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms,
- 4.7.5 Except in the case of death or personal injury caused by GBS's negligence, or liability for defective products under the Consumer Protection Act 1987, GBS will not have any Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services even if GBS had been advised of the possibility of such potential loss.
- 4.7.6 Without prejudice to clause 4.7.8, if GBS fails to provide GBS System Care in accordance with its obligations hereunder, the total Liability of GBS in any one year for any Loss suffered by the Customer as a result of such failure will not exceed the Charges paid by the Customer in such year for the GBS System Care in question.
- 4.7.7 Without prejudice to clause 4.7.8, if GBS fails to provide the Services in accordance with its obligations hereunder, the total Liability of GBS for any Loss suffered by the Customer as a result of such failure will not exceed the charges paid by the Customer in respect of such Services.
- 4.7.8 Notwithstanding the express provisions of clauses 4.7.6 and 4.7.7, except in the case of death or personal injury caused by GBS's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall GBS's Liability in respect of any Loss to the Customer exceed £50,000.
- 4.7.9 Except in the case of death or personal injury caused by GBS's negligence, or liability for defective products under the Consumer Protection Act 1987, no action regardless of form may be brought by the Customer more than 12 months after the cause of action has accrued.
- 4.7.10 GBS will have no liability under these Terms or otherwise to the Customer arising out of:

- 4.7.10.1 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its operating system software, application software, data files and other documentation;
  - 4.7.10.2 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of GBS in accordance with these Terms or any other reason;
  - 4.7.10.3 any act or omission of any third party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facility in respect of the Equipment);
  - 4.7.10.4 and if any damage to any of the program or data files of the Customer occurs then GBS's responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on site assistance is required to reconstruct the files then GBS will charge the Customer for the cost of such assistance at GBS's then current rates.
- 4.7.11 The Customer warrants to GBS that none of its employees nor the employees of any other party will become employees of GBS by reason of the provision of the services by GBS under these Terms, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the Regulations") or otherwise. The Customer will repay to GBS any costs, expenses or other sums for which GBS is or may be liable by reason of the applicable or alleged application of the Regulations in relation to provision of such services by GBS including (without limitation) any compensation or damages which GBS pays to any such person.

#### **4.8 Warranties**

- 4.8.1 The Customer warrants and represents that the use by GBS of any data, materials or equipment supplied by the Customer for use by GBS, will not infringe the Intellectual Property Rights of any third party and the Customer will fully indemnify GBS in this respect.

#### **4.9 Confidentiality**

- 4.9.1 Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer.
- 4.9.2 GBS may as a consequence of providing any services to the Customer be exposed to information which the Customer may consider to be Confidential Information. It is the Customer's responsibility to ensure that any such Confidential Information is marked appropriately or otherwise identified in writing to GBS.
- 4.9.3 The obligations of this clause 4.9 shall survive the termination of these Terms.

#### **4.10 Performance**

- 4.10.1 GBS will not be liable for any failure or delay in complying with these Terms if the failure or delay was due to force majeure, including any circumstances whatsoever beyond the reasonable control of GBS in which event GBS will as soon as reasonably practicable notify the Customer of the nature and extent of the circumstances in question. If the force majeure continues for more than 30 days then GBS may cancel this Contract (or any part thereof) without liability to the Customer.

#### **4.11 Sub-Contracts**

- 4.11.1 GBS may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time.
- 4.11.2 The Customer acknowledges that this Contract is personal to the Customer and that it may not assign or in any way make over to any third party, whether in whole or in part, the benefit of, and/or its obligations under this Contract without the prior written authority of GBS and on such terms as GBS may reasonably require.
- 4.11.3 Save where expressly stated in these Terms, no person will become entitled to enforce any of its provisions of these Terms who would not have been so entitled but for the provisions of the Contracts (Rights of Third Parties) Act 1999, the provisions of which do not apply to these Terms.

#### **4.12 Termination**

- 4.12.1 GBS may without prejudice to any other remedy available to it at any time by giving written notice terminate or suspend this Contract or such part of it as GBS may elect (including stopping any Goods in transit) if:
  - 4.12.1.1 the Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within thirty days of a written notice detailing the breach;
  - 4.12.1.2 a resolution is passed or an order is made for the liquidation of or the winding up of the Customer (save for the purpose of a bona fide reconstruction or amalgamation);
  - 4.12.1.3 the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets;
  - 4.12.1.4 the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;
  - 4.12.1.5 the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;
  - 4.12.1.6 the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;
  - 4.12.1.7 in the case of a sole trader or partnership anything analogous to any of the above occurs.
- 4.12.2 On termination of this Contract for any reason the Customer will return or delete any of GBS's Confidential Information and return to GBS all property of GBS under the Customer's possession or control and GBS will return or delete any of the

Customer's Confidential Information and return to the Customer all property of the Customer under GBS's possession or control.

4.12.3 On termination of the Contract any licence to use software granted by GBS will immediately terminate and the Customer will return to GBS any such software and all copies thereof and will not use or permit the use of any such software. The Customer acknowledges and agrees that GBS will be entitled to remove such software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.

4.12.4 If the Customer terminates this Contract (or GBS terminates by reason of any acts or omissions of the Customer) then:

4.12.4.1 in respect of any Goods such termination can only be made with GBS's written consent and on terms that the Customer will indemnify GBS in full against all loss (including loss of profit) costs, charges and expenses incurred by GBS as a result of such termination.

4.12.4.2 in respect of GBS System Care if the termination occurs prior to the end of the Initial Term or any Renewal Period, GBS may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as GBS has reasonably incurred in equipping itself to deliver GBS System Care and which have not been fully recovered by GBS from the Charges paid by the Customer at the date of termination; and

4.12.4.3 in respect of Services the Customer shall be liable for the full value of GBS's charges set out in the Proposal as well as any and all charges, fees and additional costs accrued up to the point of termination, which may include but not be limited to software costs and travelling expenses.

#### **4.13 Data Protection**

4.13.1 Each party will ensure that in the performance of its obligations under these Terms it will at all times comply with the Data Protection Act 1998.

4.13.2 The Customer consents to the processing by GBS of the entire Customer's personal data (as the term 'personal data' is defined in the Data Protection Act 1998) for all purposes connected with these Terms.

4.13.3 The Customer acknowledges that any data transmitted over the Internet or through any other form of transmission including by telephony or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that GBS has no liability for the loss, corruption or interception of any such data.

#### **4.14 Non Solicitation**

4.14.1 The Customer acknowledges the investment made by GBS in the training of GBS's Personnel and the commercial interest which GBS has in retaining their services.

4.14.2 The Customer agrees that if any of the GBS Personnel who have provided all or any part of any services for or on behalf of GBS to the Customer within 6 months of leaving the employment or engagement of GBS accepts an Engagement with the Customer then the Customer will pay to GBS such sum as represents 30% of their current annual salary or other sums to be paid by the Customer to such person(s) within the first 2 years of such Engagement.

#### **4.15 Notices**

4.15.1 All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

#### **4.16 Law and Jurisdiction**

4.16.1 These Terms will be governed by and construed in accordance with English Law and the English Courts will have non-exclusive jurisdiction to hear all disputes arising in connection with these Terms.

4.16.2 The invalidity or unenforceability for whatever reason will not prejudice the continuation in force of the remainder of these Terms and if any part of these Terms is held by a Court or other competent authority to be illegal or ineffective it or they will be replaced with such legal and effective terms that most closely approach the ineffective terms.

#### **4.17 Entire Agreement**

4.17.1 These Terms, the Proposal, Project Plan, Scope of Service and Definition of Service contains the entire agreement between the parties with respect to their subject matter and supersede all previous written and oral agreements and understandings between the parties. The Customer acknowledges that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision except as expressly set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of GBS for any fraudulent misrepresentation.

#### **4.18 Miscellaneous**

4.18.1 any reference to person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and

4.18.2 any reference to company includes any company, corporation or other body corporate, wherever and however incorporated or established.

4.18.3 The parties hereby agree that a person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any of these Terms.