

Terms and Conditions for the Provision of Software Support Services

1	Definitions	8	Movement of Equipment
1.1	In these terms and conditions the following expressions shall have the following meaning:-	8.1	The Customer shall not move the Licensed Programs from the Location without giving the Supplier one month's prior notice in writing. In the event of the Licensed Programs being moved from the Location the Company reserves the right to increase the Charges for Services.
	Additional Charges: means the charges to be calculated by the Supplier on a time and materials basis at its then prevailing rates;	8.2	If the Services are to be provided electronically the provisions of this Agreement shall be suspended during the re-location of Licensed Programs and shall recommence once the Licensed Programs have been reinstated provided that the Licensed Programs have not been damaged during the move and have been installed correctly.
	The Agreement: means this agreement between the Supplier and the Customer for the provision of the Services which incorporate these terms and conditions and the document (incorporating the Schedule) attached overleaf;	9	Confidentiality
	Bespoke Software: means such of the Licensed Programs which are not Third Party Software and which have been designed, written or modified by the Supplier in accordance with the Customer's requirements;	9.1	Except as provided for in Clauses 9.2 and 9.3 the Customer shall at all times during the continuance of this Agreement and after termination:
	Charges: means the annual charge for the Services set out in the Schedule or as verified by the Supplier in accordance with Clauses 6.2 and 6.3;	9.1.1	use its best endeavours to keep all Restricted Information confidential and accordingly not to disclose any Restricted Information to any other person; and
	Commencement Date: means the date set out in the Schedule upon which this Agreement shall commence;	9.1.2	not use any Restricted Information for any purpose other than the performance of the obligations under this Agreement.
	Customer: means the person identified overleaf;	9.2	Any Restricted Information may be disclosed by the Customer to:-
	The Equipment: means the items of computer hardware identified by type and series number in the Schedule;	9.2.1	any government or other authority or regulatory body or
	Excepted Services: means those services referred to in Clauses 4.1 and 4.2 not included within the Services;	9.2.2	any employees of the Customer or any of the aforementioned persons,
	The Location: means the place specified in the Schedule for the location of the Equipment or to such place as the Equipment is relocated in accordance with Clause 8.1;		to such extent only as necessary for the purposes contemplated by this Agreement or as is required by law and subject in a case to the Customer using its best endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.
	Licensed Programs: means the software programs in object code as identified in the Schedule;	10	Customer Representatives
	Licensed Program Materials: means the Licensed Programs and any instruction manuals, user guides and other information in relation to them in either printed or machine readable form;	10.1	The Customer shall inform the Supplier upon the Commencement Date of the identity of the person or persons who shall act as the same contact point and channel of communication for the provision by the Supplier of the Services during this Agreement. The Customer should forthwith inform the Supplier of any change in the identity of any such person or persons.
	New Release: means any improved or modified or corrected version of the Licensed Programs;	11	Staff
	Restricted Information: means any information which is disclosed to the Customer by the Supplier (whether orally or in writing) and whether or not such information is expressly stated to be confidential or marked as such;	11.1	The Customer agrees that during the term of the Agreement and for a period of twelve months after its termination it will not employ or engage any member of the Supplier's Staff without the prior written consent of the Supplier.
	Services: means the maintenance services to be provided by the Supplier as set out in Clause 2 hereof;	12	Performance
	The Schedule: means the Schedule of products or services set out in the attached invoice;	12.1	If there shall be any defect in the performance by the Supplier of the Services due to the Supplier's fault then the Supplier shall undertake to re-perform such defective services free of charge.
	The Supplier: means Equiva Via Systems Ltd (co reg 4701502)	12.2	Save as set out herein and at Clause 12.1 and 13 all conditions, all terms and warranties, representations or guarantees whether express or implied (by statute, common law or otherwise) relating to the performance by the Supplier of the Services or Excepted Service or any other services performed by the Supplier pursuant to this Agreement are hereby excluded. For the avoidance of doubt the Supplier does not warrant that any such services will cause the Licensed Programs to operate without interruption or error free, nor is any warranty given that any such services shall ensure or make the Licensed Programs year two thousand compliant as defined at Clause 4.1.11 hereof.
2	Support Services	12.3	The Customer acknowledges that the Supplier provides equipment, maintenance, and services and also provides a year two thousand compliance service and the Supplier's fees are determined on the basis that Clauses 12.1, 12.2, and 13 hereof shall apply.
2.1	In consideration of the Charges the Supplier shall upon receipt of a request from a Customer provide the following Services:-	13	Liability
	2.1.1 advice and assistance on the operation of the Licensed Programs by telephone and;	13.1	Except in respect of death or personal injury caused by the Supplier's negligence the Supplier shall not be liable for any loss or damage of whatsoever nature or to whomsoever or whatsoever caused arising out of the provision of the Services or Excepted Services or other services provided under this Agreement notwithstanding that the same may be due to negligence of the part of the Supplier's employees, sub-contractors or agents or for any defect, inherent, latent or otherwise which may be or which may subsequently develop in the Licensed Programs maintained by the Supplier or otherwise howsoever arising
	2.1.2 the diagnosis of faults in the Licensed Programs by telephone using the Supplier's reasonable endeavours.	13.2	The Supplier shall not be liable for any claims arising out of the misuse of the Licensed Programs by the Customer or by any other person.
2.2	If the Supplier considers any fault relates to Third Party Software, the Supplier shall investigate the fault and if the fault relates to the latest version of the Third Party Software or latest version of the Third Party Software owned by the Customer the Supplier shall have no liability in relation thereof. For the avoidance of doubt, the Supplier shall not be obliged to remedy the faults in the Third Party Software.	13.2.1	In the event of any claim by the Customer, settlement will be limited to the Charges and will in no way extend to consequential loss howsoever caused.
2.3	If the Supplier considers any fault relates to Bespoke Software, the Supplier shall consider the fault and shall liaise with the authors of the Bespoke Software in relation to a corrected version. For the avoidance of doubt, the Supplier shall have no obligation to remedy any faults in the Bespoke Software.	14	Variation
2.4	The Services shall not include attendance at the location or any other premises of the Customer by the Supplier. Without prejudice to the foregoing, provided that the Supplier has undertaken telephone diagnosis in accordance with Clause 2.1.2 the Supplier may at its sole discretion attend at the Location to diagnose any faults in the Licensed Programs.	14.1	This Agreement cannot be varied, altered or excluded unless such variation, alteration or exclusion is agreed between the parties writing between the authorized representatives of the Customer and the Supplier (being in the case of the Supplier a director of the Supplier) and signed by the parties to be bound.
2.5	The Supplier may at its sole discretion at the request of the Customer provide the Services electronically via a dial up modem in which case the Customer agrees to provide access to the Licensed Programs to the Supplier via a dial up modem. Any such Services provided electronically shall be charged to the customer as an additional service by levying Additional Charges and be subject to the terms and conditions herein.	15	Representations
2.6	The Supplier shall from time to time at the Supplier's sole discretion dispatch to the Customer fixes in respect of the Licensed Programs. The Supplier may ask at its sole discretion at the request of the Customer install such fixes which installation shall be charged to the Customer as additional service by levying the Additional Charges and be subject to the terms and conditions herein.	15.1	The Customer undertakes and is solely responsible for satisfying itself that the Services and any other services provided by the Supplier pursuant to this Agreement meet the needs of its business and are suitable for the Licensed Programs. The Customer accepts it does not rely upon any representations whether orally or in writing as to the suitability or otherwise of the Services or any other services provided by the Supplier under this Agreement made by or on behalf of the Supplier and accepts and understands that no member of staff of the Supplier other than a director or has any authority to make any binding representation concerning the Service and other services provided by the Supplier, this Agreement or any variation of the Agreement. In entering into this Agreement, the Customer acknowledges that it does not rely on and waives any claim for breach of any representation by the Supplier. For the avoidance of doubt, the Supplier does not represent or warrant that the service or any services to be provided hereunder shall meet the Customer's requirements or that the operation of the Licensed Programs will be uninterrupted or error free or year two thousand compliant as defined at Clause 4.1.11 hereon.
2.7	The Supplier shall from time to time at the Supplier's sole discretion dispatch to the Customer a New Release of the Licensed Programs, provided always that the Customer shall be entitled to levy Additional Charges for such New Release as an additional service subject to the terms and conditions hereof.	16	Term
3	Time for the Provision of the Services	16.1	Subject to the provisions of Clause 17 this Agreement shall commence on the Commencement Date and shall continue automatically from year to year unless or until terminated by either party giving to the other not less than 90 days notice in writing prior to the anniversary.
3.1	The Supplier shall provide the Service upon request by the Customer between the hours of 9.00am and 5.00pm Monday to Friday (excluding bank and other public holidays) and shall use its reasonable endeavours to respond to any request for the Services by the Customer within 24 hours of receipt of a request by a Customer save for over the Christmas and New Year period where the Supplier shall be skeleton staff.	17	Termination
3.2	For the avoidance of doubt, the response time set out at Clause 3.1 and any other dates or times specified by the Supplier shall be estimates only and the Supplier shall not be liable to the Customer for any loss or damage (including loss of use, loss of contract or loss of profits) incurred by the Customer by any failure of the Supplier to meet any such dates.	17.1	Save as herein appears the Customer shall have no right to cancel the whole or any part of the Agreement and if notwithstanding this clause, the Customer shall purport to cancel the whole or any part of the Agreement, the Supplier may, by notice in writing to the Customer, elect to treat the Agreement as repudiated and the Customer shall thereupon be liable to pay to the Supplier by way of liquidated damages a sum equal to all the expenses incurred by the Supplier in connection with the Agreement including, in particular without limitation, an appropriate amount for any loss of profit.
4	Excepted Services	17.2	The Supplier's reasonable estimate of the expenses incurred by it on repudiation by the Customer as referred to in clause 17.1 should be final and binding on the parties.
4.1	The Services shall not include any advice or assistance or diagnosis or rectification of any fault due to or resulting from:-	17.3	If the Supplier for whatever cause is unable to supply the Services or any of its other obligations under this Agreement within the time set out herein or at all, the Supplier may by notice in writing to the Customer terminate the Agreement or suspend the Agreement with out any liability for any loss or damage thereby incurred by the Customer.
	4.1.1 the improper use, operation or neglect of either the Licensed Programs or the Licensed Program Material or the Equipment;	17.4	The Supplier may without prejudice to its other rights or remedies immediately by notice to the Customer terminate or suspend (at the Supplier's option) this Agreement;
	4.1.2 the modification of the Licensed Programs or their merger in (in whole or in part) with any other software;	17.4.1	if any sum due from the Customer under this Agreement or any other Agreement between the Supplier and the Customer is not paid within 10 days and it became due, or if any debt due to the Supplier, or to an associated company from the Customer is not paid within 10 days after it became due.
	4.1.3 the use of the Licensed Programs on equipment other than the Equipment;	17.4.2	if the Customer is in breach of this Agreement or any other Agreement between the Supplier and the Customer and does remedy that breach (if remedial) with 10 days of written notice from the Supplier to do so.
	4.1.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by the Supplier;	17.4.2.1	If the Customer makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) enters into liquidation (otherwise than for the purpose of amalgamation or reconstruction).
	4.1.5 any alteration, repair, adjustment, modification or maintenance of the Licensed Programs by any person other than the Supplier without the Supplier's written consent;	17.4.2.2	An encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Customer: or
	4.1.6 any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Equipment;	17.4.3	the Customer ceases or threatens to cease to carry on business; or
	4.1.7 the Customer's failure to enter upon the Equipment in substitution for the previous release any New Release of the Licensed Programs within 7 days of receipt by the Customer;	17.4.3.1	the Supplier reasonably apprehends that any of the events mentioned at 17.4.3, 17.4.4, and 17.4.5 above is about to occur and notifies the Customer accordingly.
	4.1.8 the use of the Licensed Programs for a purpose for which they were not designed;	17.5	If this clause applies then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cap the Agreement or suspend the provision of any further services under the Agreement or any other Agreement between the Supplier and the Customer without any responsibility to the Customer, and if the Services or any other services provided under this Agreement have been provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
	4.1.9 the Customer's failure, inability or refusal to afford they Company personnel proper access to the Licensed Programs in accordance with Clause 5.1;	18	Force Majeure
	4.1.10 the transportation or relocation from the Location of the Licensed Programs save where the same has been performed by or under the direction of the Supplier;	18.1	Insofar as the performance of the Agreement by the Supplier may be affected by any strike, any lack of available transport or material or any restriction, regulation or decree by any local or municipal authority or government department or by any strike, commotion, riot, act of God or for any other cause or reason of whatsoever nature beyond the Supplier's control (which shall be construed without the eudemus generis rule) the Supplier may elect at its absolute discretion either:-
	4.1.11 the Licensed Programs not being year two thousand compliant as determined by the document published by the part of the British Standards Institution called DISC entitled "A Definition Of Year Two Thousand Conformity Requirements" and which has the reference "PD Two Thousand-1". In construing the meaning of year two thousand compliant regard shall be had for the Application of the Definition and Rules set out in the same document;	18.1.1	to terminate the Agreement; or
4.2	The Services shall not include:-	18.1.2	to proceed to perform or continue performance under the Agreement within a reasonable time after the termination of such event or circumstances and with such reasonable variation as the circumstances shall prevail.
	4.2.1 the rectification of any loss or corrupted data;	19	Severability
	4.2.2 the installation of any New Releases or fixes for the Licensed Programs;		Should any of these terms and conditions be found by a court or other competent authority to be void or unenforceable such provision shall be deemed to be deleted from these terms and conditions and the remaining terms and conditions shall continue in full force and effect.
	4.2.3 the provision of Services other than at the Location;	20	Obligations
	4.2.4 assistance in the operation of, installation or diagnosis of faults with data imports, data exports, database corruption, any re-installation of the Licensed Programs, programming, report writing or mail merging systems, or transfers to new or replacement equipment.		The Supplier may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group (if any), provided that any act or omission of any such other member shall be deemed to be the act or omission of the Supplier. The benefit and obligations of this Agreement shall not be assigned or sublet by the Customer without the prior written consent of the Supplier.
4.3	The Supplier shall only provide the Services if the Customer has a valid license to use the Licensed Programs.	21	Waiver
5	Customers Obligations	21.1	Any concession, latitude or waiver allowed by the Supplier at any time shall only apply to the extent specifically covered by said concession, latitude or waiver and shall not prevent the Supplier otherwise exercising its full rights under this Agreement and these terms and conditions.
5.1	The Customer shall permit the Supplier whether electronically or otherwise unrestricted access to the Licensed Programs on any day for the purposes of this Agreement and shall ensure that the Licensed Programs are made available and are readily accessible to the Supplier. Otherwise the Supplier shall be entitled to charge the Customer Additional Charges in relation to the waiting time of its agents, sub-contractors or employees until the Licensed Programs are available and readily accessible as aforesaid. The Customer shall be responsible when the Licensed Programs are accessed by the Supplier electronically for providing a suitable dial-up modem and shall be responsible for all the costs in relation thereto including without limitation the telephone costs.	22	Notices
5.2	The Customer shall be responsible for upgrading the Licensed Programs with a New Release where required during the currency of the Agreement.	22.1	Save as hereinbefore otherwise provided, any notice required or permitted to be given by the Customer under these terms and conditions shall be in writing, addressed to the Supplier at its registered office. Any notice required or permitted to be given by the Supplier to the Customer under these terms and conditions shall be in writing, addressed to the Customer at the address shown for the Customer overleaf.
5.3	The Customer shall make available at the location such facilities as the Supplier shall reasonably require in order to discharge its obligations hereunder including without limitation adequate work space, storage, office furniture and equipment.	23	Conflict
5.4	The Customer shall take all reasonable precautions to protect the health and safety of the Supplier's employees, agents and sub-contractors while at the Location.	23.1	To the extent of any conflict between these terms and conditions and any terms and conditions of the Customer either on the Customer's order form or otherwise, the terms and conditions herein contained shall take precedence. The Supplier shall not be bound by the Customer's terms and conditions or any of them unless expressly agreed to in writing by a director of the Supplier after the date of the Agreement of which these terms and conditions are a part.
5.5	The Customer shall supply all documentation and other information necessary from time to time for the Supplier to diagnose any fault in the Licensed Program.	24	Headings
6	Charges	24.1	The headings to the clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
6.1	The Charges are payable on or before the Commencement Date and on or before every anniversary thereof so long as this Agreement continues in force.	25	Applicable Law
6.2	Save as set out in Clause 6.3 the Supplier shall not be entitled to vary the Charges during the period of 12 months commencing on the Commencement Date and thereafter shall be entitled to vary the Charges not more than once in every successive period of 12 months.	25.1	These terms and conditions and this Agreement shall be construed according to English Law and the parties hereto hereby submit.
6.3	The Supplier shall be entitled to vary the Charges in accordance with Clause 8.1 or in the event of the Licensed Programs being modified, added to, improved, substituted, upgraded or enhanced.	26	Accountants' Club and Accredited Dealer Programme Software Pack
6.4	The Supplier will invoice the Customer for the Charges upon the Commencement Date and thereafter at least 30 days before every successive period of 12 months. The Supplier shall invoice the customer immediately upon any variation of the Charges pursuant to Clause 6.3 and such invoices shall be paid within thirty days.	26.1	Software Programs that are included within the Accountants' Club and Dealer Packs will function for 12 months. On renewal of the Accountants' Club or Dealer Programme, new authorisation numbers will be issued.
6.5	All Charges of the Supplier hereunder shall be exclusive of Value Added Tax and any other taxes from time to time in force.		
6.6	The Charges shall not include the cost of any Excepted Services.		
6.7	The Supplier reserves the right to charge the Customer interest in respect of the late payment of any Charges or Additional Charges or any other sums due under this Agreement (as after as well as before judgment) at the rate of 4 per cent above HSBC plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).		
7	Additional Charges		
7.1	The Supplier may in its sole discretion upon request by the Customer provide all or any of the Excepted Services but shall be entitled to charge from the same as an additional service by levying Additional Charges subject to the terms and conditions hereof.		
7.2	The Supplier shall be entitled to levy Additional Charges in the manner set out in Clause 7.3 in the event that:-		
	7.2.1 the Supplier is requested to provide advice or assistance or diagnose a fault which in the Supplier's opinion is due to the Customer's misuse of the Licensed Programs or operator error or the Customer's ignorance of the use of the Licensed Programs or where the Customer's request for the Services was unnecessary; or		
	7.2.2 the Supplier provides the Services at the request of the Customer outside the hours set out at clause 3.1 or otherwise provides the Services at the request of the Customer outside the terms of this Agreement.		
7.3	The Additional Charges payable under Clauses 2.5, 2.6, 7.1, and 7.2 shall be payable by the Customer prior to the Supplier providing the Excepted Services or any additional services. Any Additional Charges payable under Clause 2.7 shall be paid prior to dispatch of the New Release of the Bespoke Software. The Customer shall pay the Additional Charges immediately upon receipt of an invoice in relation thereto.		
7.4	Where overnight accommodation is required by the Supplier's employees, agents or sub-contractors to perform this Agreement, the Customer shall be responsible for all expenses in relation to the same which shall be payable by the Customer immediately upon receipt of an invoice therefor.		