

Terms and Conditions of Service

Version 009
July 2020

Introduction

This document is copyright pure technology group and is for internal use and customer information.

The purpose of this document is to define the Terms governing Services (the “Service”) from pure technology group (“Company”) to the Customer (“Customer”) under the Service Contract, which is the contract document defining Customer requirement from the Service. The Service is designed to be scalable and accommodate the changing requirements of the Customer within contract parameters and include other modular Services.

These Terms should be read in conjunction with the Service Contract, Service Level Agreement, Service Description and Service Acceptable Use Policy. The Company Terms and Conditions of Sale apply to any Hardware or Software purchases made by the customer.

Definitions

The following definitions apply to the Service and these Terms and Conditions:

“Anti-Virus”, “Anti-Spam”	Software Solutions provided as part of the Service to manage and mitigate Internet and E-mail security threats.
“Active/Active”	Dual-DataCentre configuration with identical Systems in two DataCentres separated by suitable geographic distance and Replication of Data between DataCentres to achieve geographic resilience.
“Active/Backup”	Also referred to as “Active/Standby”. Single DataCentre operation with Data replicated to a secondary site to achieve data resilience.
“Asset Record”	A list of Hardware and/or Software used within the Service typically referencing the make/model/serial numbers.
“Acceptable Use Policy”	The policy under which the Company provides the Service to the Customer.
“Availability”	The Service being available for Customer use, free from interruption, at the benchmark speed established and recorded at Service Commencement Date as recorded by Company monitoring systems.
“Back-Up”	An automated copy of Customer data onto a suitable alternate media.

“Change Management”	The process whereby changes to the Service are requested and managed to a pre-determined volume of changes defined in the Service Contract and described in the Service Level Agreement.
“Commencement Charge”	The single initial monetary charge payable by the Customer to the Company to commence planning and deployment to establish the Service as defined in the Service Contract.
“Commencement Date”	The agreed live starting date of the Service as defined in the Service Contract.
“Confidential Information”	Information or data of whatever nature relating to either Party’s business, customers, prices, plans, strategies, including prospective business and prospective customers which is obtained, whether (without limitation) in writing, pictorially, in machine readable form or orally, by the other Party but does not include information which is or becomes publicly available.
“Contract”	The collective term for the Service Contract, Service Level Agreement, Service Description, Acceptable Use Policy and these Terms and Conditions of Service.
“Customer”	The organisation contracting the Service from the Company as defined in the Service Contract. May be referred to as Party in singular or in plural, as Parties.
“Customer Software”	Software, code or scripts licensed by the Customer and/or provided by the Customer’s suppliers and deployed by the Company as part of the Service.
“Connectivity”	The telecommunication lines between the DataCentres and the Customer Sites over which the Service is delivered.
“DataCentre (s)”	Commercial facilities dedicated to the purpose of hosting the Service and contracted to the Company.
“DR Site”	Site facility for data Replication and Service continuity in the event of a disaster.
“Fixes”	Security and bug-fix updates provided by Software and/or Hardware manufacturer(s).
“Force Majeure”	Any event beyond the reasonable control of any affected Party or Parties.
“Hardware”	Network, server, storage or other technology infrastructure appliances deployed by the Company and/or the Customer to deliver the Service.

“Incident”	Any event which is not part of the standard operation of the Service and which causes, or may cause, an interruption to, or a reduction in, the quality of the Service.
“Incident Reporting”	The reporting of Incidents as described in the Service Level Agreement.
“Monitoring”	Provision by the Company of real-time monitoring of the Hardware and Software.
“Monthly Charge”	The recurring monthly charges payable by the Customer to the Company as defined in the Service Contract.
“Operating System”	Software that supports Hardware basic functions, such as scheduling tasks and controlling peripherals.
“Planned Maintenance”	The process whereby the Company carries out pre-planned updates, upgrades or other modifications to the Hardware or Software involved in the Service as described in the Service Level Agreement.
“Replication”	Copy of data between DataCentres at a pre-determined frequency as specified in the Service Contract and by the process described in the Service Level Agreement.
“Reported Incident”	An Incident reported to the Company by the Customer in accordance with the process described in the Service Level Agreement.
“Response Times”	Service Incident Response Times specified as the time taken for the Company to respond and instigate fix on a reported Incident as per the Service Contract.
“Scheduled Maintenance”	The process whereby the Company carries out Customer requested updates, upgrades or other modifications to the Hardware or software involved in the Service as described in the Service Level Agreement.
“Service”	The contracted service or services provided by the Company to the Customer in the Service Contract as defined in the Service Description.
“Service Availability”	Availability of the Service as calculated by Monitoring and described in the Service Level Agreement.
“Service Contract”	The contract document defining Customer requirement from the Service.

“Service Description”

The description of the Service provided by the Company to the Customer.

“Service Level Agreement”

The Service Level Agreement relevant to the Service.

“Significant Change”

Customer request to introduce new or additional technologies, new sites, new services, additional storage or increase in the number of Service users and or additional Change Management. This also includes increased charges/changes to communications, licensing and other third-party charges levied

“Software”

Network, server, storage or other technology infrastructure software, code or scripts deployed by the Company and/or supplied by the Customer to deliver the Service.

“System”

The combination of Hardware and Software relevant to the Service.

“Terms and Conditions of Service”

These Terms and Conditions applicable to the Service.

“Working Hour”

An hour applicable within the Service Times as defined in the Service Contract.

3.0 Terms

1. SERVICE

The Company shall supply the Service to the Customer as per the Service Contract, the Service Description, the Service Level Agreement and in accordance with the Service Acceptable Use Policy and these Terms and Conditions of Service.

1.1 The Service Times and Response Times to Incidents reported to the Company shall be as defined in the Service Contract and the Service Level Agreement. Response Times are deemed to run consecutively, and Incidents reported outside the Service Times will be deemed to be received at the start of the next Service Time period.

1.2 The Company shall configure the Service as necessary to allow remote support. Where Hardware and/or Software is required, this will be provided by the Company with title and ownership remaining with the Company.

2. SUPPORT SERVICES

2.1 Upon receipt of notification from the Customer of an Incident the Company will initially respond in order to attempt to resolve the Incident or obtain further diagnostic information.

2.2 Should the Company decide after the initial contact that the Incident might be resolved with remote access; the Company will use its reasonable endeavours to respond within the Response Time specified in the Service Level Agreement from the time the original request for service was made.

2.3 Should the Company decide after remote support that a site visit is necessary the Company will use its reasonable endeavours to place an Engineer on the Customer's site and/or DataCentre within the Response Time specified in the Service Level Agreement from the time the Incident was reported providing that the Customer subscribes to On-Site support, otherwise such site visits are chargeable.

2.4 If the Incident is due to Hardware failure on the Customer site, where the Hardware is outside the scope of the Service and has no warranty, the Customer will be responsible for any relevant repair / replacement arrangements.

2.5 In certain circumstances and at its discretion the Company may provide the Customer with loan equipment. Such equipment will remain the property of the Company. It is the responsibility of the Customer to maintain the loan equipment in its original condition and to ensure that it is adequately insured.

2.6 Scheduled and Planned Maintenance routines may be carried out at intervals determined at the Company's discretion and as specified in the Service Level Agreement and with prior notice.

The Company will at its discretion notify the Customer of Fixes and Service Pack Upgrades relevant to the Service and install these as appropriate.

2.7 Service Support shall not include the following unless specified in the Service Contract:

The rectification of Incidents due to Customer Software errors including viruses or malware introduced by the Customer or the Customer's agents.

The rectification of Incidents due to the installation or upgrading of Software or Hardware not specified in the Service Contract.

The rectification of Incidents due to the Customer or the Customer's agents moving or making any alterations to the System other than repairs under manufacturer's warranty.

2.8 The Company may maintain an Asset Record of Hardware and Software, at its discretion or as a paid Service as specified by the Service Contract and with the Customer's prior authority may mark each item with an asset tag number to aid identification.

3. CUSTOMER OBLIGATIONS

The Customer will:

3.1 Ensure that environmental and power supply conditions suitable for the Hardware on the Customer's site are maintained in accordance with the recommendations set out in the Hardware manufacturer's instructions and will keep the Hardware clean and in good condition.

3.2 Allow the Company reasonable access to the Hardware, provide adequate working space and facilities for the Company's employees or agents and co-operate with the diagnosis of Service or Hardware malfunctions or maintenance.

3.3 Ensure that the communication equipment is powered and connected at all times and any specific configurations or settings are unchanged. In the event that the Company is unable to establish connectivity to the Customer's site, which is due to the removal, disconnection or change of/to communication equipment or configuration, any subsequent work and site visits will be chargeable at the prevailing rate.

3.4 Provide designated contacts for the reporting of Incidents and ensure competent staff are available to assist with remote support.

3.5 Adequately train and keep trained staff on the use of the Service, the Hardware, the Software and the System as a whole.

3.6 Maintain and operate the Hardware, Software and Service in a proper and prudent manner and ensure that only competent staff are allowed to operate it.

3.7 Not modify or move Hardware or communications equipment nor make any addition or adjustment which requires modification to any configurations.

3.8 Notify the Company in writing of any problem regarding performance of the Service Contract and allow the Company the opportunity to rectify alleged breach of the Service Contract within 30 days.

3.9 The Customer is solely and entirely responsible for its data integrity.

4. DURATION AND MINIMUM TERM

The Minimum Term is 60 months from the Commencement Date unless varied within the Service Contract. Save as herein before provided and, as set out below. This will run from the Commencement Date for the Minimum Term and thereafter will continue until the expiry of twelve calendar months' notice of termination given in writing by either Party.

The Commencement Date cannot be agreed, and the Service cannot be provided, without the Service Contract being signed by authorised representatives of both parties (a Director in the case of the Company).

Before any contract termination can be accepted all accounts must be settled in full to the point of the mutually agreed termination date.

5. CHARGES

The Company's Charges are as stated in the Service Contract.

The Commencement Charge is payable immediately on Service Contract signature and the Monthly Charge is payable monthly in advance from the Service Commencement Date for the duration of the Service Contract.

The Charges shall not include the travel, accommodation and subsistence expenses of the Company's employees incurred in the provision of the Service unless agreed otherwise in writing by both Parties.

The Customer accepts that the charges will remain as specified within the Services contract excepting items outside of the Company's control such as licensing and/or telecommunication charges which are subject to change by Vendor/Provider.

The Company reserves the right to charge the Customer interest in respect of late payment of any Charges or additional Charges due under the Contract at the rate of 3% per annum above the base rate of Lloyds Bank from the due date until payment.

The Company reserves the right to withdraw or suspend the Service for late payment of Charges. Furthermore, should default be made by the Customer in paying any sum owed to the Company due under any order, as and when it becomes due, the Company reserves the right to suspend the Service and/or, at the Company's discretion the supply of any other goods or Services.

Any VAT applicable on the Charges shall be payable in addition by the Customer.

6. WARRANTY

6.1 All conditions and warranties whether express or implied by statute or otherwise shall be construed subject to these conditions and insofar as they are inconsistent therewith, shall be excluded.

6.2 The Company warrants only that it will use its best endeavours to extend to the Customer the benefit of any guarantee or warranty which may have been given to the Company by other parties in relation to the Service and of any other rights or remedies the Company may have.

6.3 Save for liability for death or personal injury, which is not excluded, neither Party shall be liable to the other for any claims for any indirect or consequential losses whether arising from negligence or otherwise.

6.4 The Customer undertakes to ensure that its employees and any other persons who use the Hardware / Software / Service receive adequate training in the safe use thereof. Similarly, the Company warrants that the Service will be carried out by competent personnel using merchantable quality goods.

6.5 The Company shall not be liable for any delays beyond its reasonable control for delays beyond the Commencement Date.

7. DEFAULTS

7.1 If the Customer shall fail to make punctual payments the Company reserves the right to withhold Service until payment is made after having given 72 hours' notice of late payment.

7.2 Either Party shall have the right to terminate this Contract if the other is in breach of its obligations under the Contract and does not rectify such alleged breach within 30 days following receipt of written notice from the other Party. Termination shall not affect any of the rights of either Party.

7.3 If either Party commits an act of bankruptcy or goes or is put into liquidation (other than solely for the purpose of a solvent amalgamation or reconstruction) or if a receiver or administrator is appointed over any part of either Party's assets or if either Party suffers a seizure of any property for non-payment of any debt, then the other Party may immediately terminate the Service Contract and the Company may suspend/withdraw the Service without notice and all payments for the Service supplied shall immediately become due.

7.4 If the Customer terminates the Service Contract for convenience, or the Company terminates due to Customer breach, in addition to other amounts owed, the Customer must pay an early termination fee equal to the total Monthly Charges due until the termination date of the Service Contract plus any charges necessary for the work involved to transfer the Service to a new provider or other party.

7.5 The Company reserves the right to carry out a pre-Commencement survey of the Customer's IT systems in order to prepare for Service. Should this survey reveal that the systems or support requirements are substantially different to those specified in this Contract the Company reserves the right to review, amend or in extreme circumstances cancel the Service Contract with immediate notice.

7.6 The Customer may audit the Service and Company by mutual agreement.

8. PERSONNEL

Both the Company and the Customer will be responsible for the supervision, direction and control of its own staff.

The Company and the Customer jointly agree that all employees must not be subjected to either verbal or physical abuse, bullying or harassment in the course of carrying out their duties. The Company and the Customer jointly undertake to treat the each other's employees in a courteous manner. Any breach of this clause will entitle either Party to notify breach.

The Company and the Customer jointly agree that, without prior consent in writing, both Parties shall not, whilst the Service Contract is operational or within 12 months of the expiration of the Service Contract (whichever shall be later), solicit, entice, procure, or seek to procure the services or employment of a member of staff employed by the other Party either directly or via a Third Party.

9. NOTICE

Any notice given hereunder must be sent by registered post addressed to the Party to be served at its registered office and any notice so sent shall be deemed to have been received by the Party to which it is addressed at the time at which it would have been delivered in the ordinary course of post.

10. GENERAL

The benefits and responsibilities under this Contract may not be assigned or subcontracted by either party unless mutually agreed in writing.

The validity, construction and performance of this Contract shall be governed by the Law of England and the Parties submit to the exclusive jurisdiction of the English Courts.