

1. Definitions & Interpretation

In this agreement, unless the context otherwise requires, the following expressions have these meaning:

“Provider” – means ARC Solutions Scotland Ltd

“Customer” – means the customer specified in the agreement.

“Equipment” – means the equipment as set out in agreement.

“Fees” – means the monies payable by the customer to the provider.

“Software” – means the programs running on the equipment in relation to which the provider is to provide the services detailed in the agreement

“Services” – means the services to be provided by the provider to the customer as described in the agreement.

“Agreement”- means the accompanying document detailing the specifics of the provision of services.

2. Provider’s Obligations

All Services

The provider shall:

- Use reasonable endeavours to provide the services in accordance with the agreement with effect of the start date as specified.
- Provide the services with reasonable skill and care.
- Use reasonable endeavours to meet deadlines agreed with the customer, but any such deadlines shall be estimates only.
- Use reasonable endeavours to act in accordance with all reasonable instructions provided by the customer provided such instructions are compatible with the scope of the services set out in the agreement.
- Use reasonable endeavours to adhere to response times as set out in the accompanying agreement and subject always to these Terms and Conditions.
- Be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Support Services.
- Use reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Customer, subject to the Customer’s acceptance of any reasonable changes to the fees that may be due because of such changes.

3. Customer’s Obligations

IT support services only

The customer shall:

- Allow the Provider access to the Equipment and all relevant Software as reasonably required by the Provider while providing the Support Services.

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- Provide adequate working space and facilities for the Provider, its agents, subcontractors, consultants, and employees as reasonably required by the Provider.
- Co-operate with the Provider upon the Provider's reasonable request in the diagnosis of any defect or malfunction in the Equipment or Software.
- Allow the Provider the use of any Equipment that is reasonably necessary to enable the Provider to provide the Support Services.
- Make freely available to the Provider:
 - any documentation associated with the Software.
 - any documentation associated with the Equipment.
 - original software installation media.
 - current data backups.

Data backup services only

The customer shall:

- Obtain and maintain all necessary licences and consents necessary with respect to the Software and the Equipment.
- Use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimise any potential data loss.
- Use reasonable endeavours to ensure that all data being backup up is safe, secure and virus free, prior to backups taking place.

All services

The customer shall use reasonable endeavours to provide all pertinent information to the Provider that is necessary for the Provider's provision of the Support Services and shall use reasonable endeavours to ensure the accuracy and completeness of such information.

The Customer may, from time to time, issue reasonable instructions to the Provider in relation to their Services. Any such instructions must be compatible with the scope of the Support Services as set out in the agreement.

If the Provider requires the decision, approval, consent or any other form of authorisation or communication from the Customer in order to continue providing the Services (or any part thereof), the Customer shall use reasonable endeavours to provide the same in a reasonable and timely manner.

The Customer shall use reasonable endeavours to inform the Provider of all health and safety rules and regulations that apply at its premises.

The Customer shall obtain and maintain any necessary licences and consents necessary with respect to the Software and the Equipment.

The Customer shall use reasonable endeavours to ensure that data backups are created regularly and in such a manner as to minimise any potential data loss.

The Customer agrees that the provider shall use Personal Data to fulfil their contractual agreements. Additionally, the provider acts as both a data controller and data processor in this regard.

4. Payment

In consideration of the Services, the Customer shall pay the Fees to the Provider in accordance with the provisions of the appropriate agreement.

IT Support Services

All payments for Services provided under this Agreement shall be paid by the Customer monthly in advance - unless the payment terms in agreement differ.

All invoice payments are due on receipt.

Data Backup & Cloud Services

All payments for services provided under this agreement are calculated monthly and shall be paid by the customer in arrears – unless the payment terms in the agreement differ.

All invoice payments are due on receipt.

Larger Purchases

All purchases over £1000 require a 50% deposit at the point of ordering.

All services

Where payments due are not included in the monthly payments above then such payments shall be made by the Customer on receipt of the relevant invoice.

If the Customer fails to make any payment on the due date, then the Provider shall have the right to charge the Customer interest on any sum outstanding from the due date of the payment until the date on which the payment is received and such outstanding sums and interest shall compound monthly until paid in full.

Payments shall be made by BACS, debit/credit card, or cash only.

The Provider shall have the right to suspend any or all Services, after a period of 30 days, until payment of the overdue sum (together with any interest due) is made in full. The Customer agrees to indemnify the Provider against any costs incurred by the Customer due to loss of service.

The Customer shall pay the Provider for any additional services provided by the Provider that are not specified in the Agreement in accordance with the Provider's hourly rate in effect at the time of the performance or such other rate as may be agreed. Any such charge for additional services shall be invoiced separately from any Fees due under the Agreement.

5. Termination

The Customer may terminate this Agreement following 30 days' notice in writing to the Provider, assuming the minimum contract term has been met – or as referred to in the agreement. If the minimum contract has not been met, the Customer may ask the provider for a settlement fee.

The Provider may terminate this agreement if the customer:

- has not paid any sum within 14 days of notice from the Provider that the payment is overdue; The customer will be notified and given a further 7 days grace period to pay any outstanding fees. The

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customer agrees to indemnify the provider against any subsequent loss of service due to late payment.

- has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets.
- has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986.
- ceases or threatens to cease to carry on business.

In the event of Termination, the Provider shall retain any sums already paid to by the Customer without prejudice to any other rights may have whether at law or otherwise.

The Customer also agrees to pay the Provider for time and materials related to off- boarding, this will be charged at the Providers standard hourly rates.

6. Liability

The Customer shall indemnify the Provider against all damages, costs, claims and expenses suffered by the Provider arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agents or employees.

Where the Customer consists of two or more persons, such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.

The Provider shall not be liable to the Customer or be deemed to be in breach by reason of any delay in performing, or any failure to perform, any of the Provider's obligations if the delay or failure was due to any cause beyond the Provider's reasonable control.

The Provider shall not be liable – whether in contract, error (including negligence), breach of statutory duty or otherwise for any loss suffered by the Customer in the form of lost revenue or profit or failure to achieve any benefit expected to be derived from the agreement, loss of use of any asset, loss of data recorded on any computer or other equipment, loss which is not the direct immediate consequence of the breach, business interruption or management time, or any other loss which is otherwise indirect, commercial, economic, special or consequential.

The Customer acknowledges and accepts that the Provider cannot guarantee 100% monitoring of its devices.

The total liability of the Provider – whether in contract, error (including negligence), breach of statutory duty or otherwise – for all breaches and/or non-performance of its obligations or liability under this Agreement shall be limited to one month's invoice value, available by the customer.

The provider cannot take responsibility for any cyber-attacks that occur where any of our tools have been implemented. Our services are designed to reduce the chance of successful cyber-attack and assist customers to review their security posture, not eliminate cyber-attacks completely.

The Customer acknowledges and accepts that the Provider shall not be liable for:

- Any failure by the Provider to restore any back-up systems.
- Any virus or other malware suffered by the Customer.

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- Loss of system recovery media by the Customer.

The Customer agrees to pay the provider for recovery of all systems based on approval from a member of their staff, for clarity approval doesn't require the business owner to agree (as time may be of the essence), it is the Customers responsibility to ensure the customers employee has the appropriate authorisation.

If the provider feels the Customer may not make the payment, they may decide to suspend all recovery efforts and insist upon immediate payment. The customer agrees to indemnify the provider in this instance.

7. Costs

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

Furthermore, the customer agrees to indemnify the provider for any losses relating to late payment where the provider has cancelled or paused services.

8. Relationship

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

9. Variations

These general terms and conditions apply unless a variation is specifically mentioned in the appropriate customer's agreement e.g "Data Backup Agreement"

If the Customer wishes to vary any details of the services in the associated Agreement, it must notify the Provider in writing as soon as is reasonably possible. The Provider shall use all reasonable endeavours to make any required changes and any additional costs thereby incurred shall be separately invoiced to the Customer.

If, due to circumstances beyond the Provider's control, it must make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. The Provider shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original arrangements as is reasonably possible in the circumstances.

10. Notices

All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

Notices shall be deemed to have been duly given:

when delivered, if delivered by courier or other messenger (including recorded delivery mail) during normal business hours of the recipient; or

when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated.

In each case addressed to the most recent address or e-mail address notified to the other Party.

11. Confidentiality

The following obligations shall apply to the Party disclosing Confidential Information ('the Disclosing Party') to the other Party ('the Receiving Party').

The Receiving Party:

- may not use any Confidential Information for any purpose other than the performance of his obligations under these Terms and Conditions.
- may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party.
- shall make every effort to prevent the use or disclosure of the Confidential Information.

The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information that:

- is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party.
- is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party.
- is required to be disclosed by any applicable law or regulation.
- is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other Party to these Terms and Conditions in respect of it and who imposes no obligations of confidence upon the Receiving Party.

The obligations of the Parties under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.

12. Sub-Contracting

The Provider may sub-contract to third parties all or any part of the work to be performed.

The Customer shall not assign to a third party any of its rights or obligations under these Terms and Conditions without the prior written consent of the Provider.

13. Force Majeure

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

14. Waiver

No waiver by the Provider of any breach of these Terms and Conditions and/or the Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions and/or clause(s) of the Agreement shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.

No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

15. Severance

If any provision of these Terms and Conditions and/or clause(s) of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and/or the Agreement and the remainder of the provision and/or clause in question shall not be affected thereby.

16. Laws & Jurisdiction

This agreement shall be governed by the laws of Scotland.

The terms may be updated from time to time and latest version will be available –
www.arcomputingsolutions.co.uk/general-terms