

# Clifton IT Standard Terms and Conditions of Business

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

(a) *“Call”* Communication received by Clifton IT from the Customer reporting a defect or malfunction in the Equipment.

(b) *“Charges”* The sums payable by the Customer to Clifton IT for the System Care Maintenance, as set out in the Scope of Service.

(c) *“Confidential Information”* Any trade secrets or confidential or proprietary information of either party, including these Terms, but excluding any information:

(i) *in the public domain otherwise than by a breach of the Contract;*

(ii) *which, prior to disclosure, was already known by the recipient;*

(iii) *that the other party develops independently of or to any information that is disclosed to it under the provisions of the Contract;*  
*or*

(iv) *which is subsequently disclosed to the recipient by a third party at liberty to disclose it.*

(d) *“Contract”* The contract between the Customer and Clifton IT for the sale of Goods and/or the System Care Maintenance in accordance with these Terms.

(e) *“Customer”* The person or legal entity who accepts Clifton IT’s written quotation for the sale of the Goods and/or the supply of the System Care Maintenance or whose written order in respect thereof is accepted by Clifton IT.

(f) *“Engagement”* The employment, hire or other use, directly or indirectly and whether as an employee or on a self employed basis.

(g) *“Equipment”* All or part of the network, hardware, software and Third Party Software as specified or identified in the Scope of Service.

(h) *“Clifton IT”* Clifton IT Ltd having Company No. 05449439

- (i) *“Goods” The computer hardware, software and related equipment which Clifton IT is to supply in accordance with these Terms.*
- (j) *“Initial Term” The fixed period for which the System Care Maintenance is to be provided as specified in the Scope of Service.*
- (k) *“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 Clifton IT*
- (l) *“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.*
- (m) *“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 Clifton IT, its employees, its agents or otherwise.*
- (n) *“Normal Working Hours” 09:00 to 17:00 Monday to Friday but excluding bank or statutory holidays.*
- (o) *“Operating Platform” The complete configuration of hardware, ancillaries/accessories and operating system for an item of Equipment.*
- (p) *“Personnel” Any employee, agent, consultant and/or sub-contractor of the party concerned*
- (q) *“Scheduled Service Hours” The times during which Clifton IT will endeavour to provide the System Care Maintenance as specified on the Scope of Service.*
- (r) *“Scope of Service” The Schedule signed by the Customer setting out details of the Equipment, response times and other information in respect of the System Care Maintenance.*
- (s) *“System Care Maintenance” The provision of a maintenance service for the Equipment together with proactive support visits as set out in the Scope of Service.*
- (t) *“System Audit” Means an inspection of the Equipment or part thereof but does not include repair or replacement.*

*(u) "Third Party Software" Software developed and licensed by a third party, for which Clifton IT have agreed to provide support, as detailed in the Scope of Service*

## **Part 1 - Sale of Goods**

1) The following terms and conditions in this Part 1 apply to the sale of Goods by Clifton IT

### **Formation of Contract**

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

### **Accuracy of Order**

3) The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer to Clifton IT.

### **Customer Software**

4) All software, whether supplied, installed or implemented is provided within the terms and conditions and licence of the software provider.

5) If the software comprised in the Goods is not owned by Clifton IT then the Customer will be required to enter into an end-user licence agreement with the owner of the software concerned.

6) If any software has to any extent been written or developed by Clifton IT then subject to clause 5 above, Clifton IT 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 Clifton IT and notwithstanding clause 11 no title or ownership thereof will be transferred to the Customer

### **Customer Delivery**

7) Delivery of the Goods will take place by Clifton IT delivering the Goods to the place agreed in writing with the Customer.

8) 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. Clifton IT will not be liable for any loss or damage (howsoever arising) to the Customer should

Clifton IT be unable to deliver the Goods within the quoted period.

9) Clifton IT is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.

10) If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by Clifton IT 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.

### **Transfer of Property and Risk**

11) 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 Clifton IT 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 Clifton IT to the Customer for which payment is then due.

12) Until title in the Goods has passed to the Customer, Clifton IT will be entitled at any time to require the Customer to deliver up the Goods to Clifton IT 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.

13) Until title in the Goods has passed to the Customer, the Customer will hold the Goods as Clifton IT'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 Clifton IT's property.

### **Installation**

14) Where Clifton IT's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by Clifton IT) specifies installation of the Goods or Clifton IT 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 Clifton IT is prevented or delayed from carrying out the installation through no fault of Clifton IT then Clifton IT is entitled to charge the Customer at Clifton IT's then current prices for any additional works carried out by or on behalf of Clifton IT to enable it to complete the installation and/or for compensation for any losses or costs incurred by Clifton IT by reason of such delay.

### **Warranty**

15) 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 Clifton IT. The

Customer must within the said period of 90 days notify Clifton IT in writing of any such defects and permit Clifton IT to inspect the Goods as required by Clifton IT. If the Customer does not so notify then the Customer will not be entitled to reject the Goods and Clifton IT will have no liability for such defect.

16) The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by Clifton IT and does not apply to any Goods that have been repaired or modified by anybody other than Clifton IT.

17) If a valid claim is notified under clause 15 above then Clifton IT 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 Clifton IT will have no further liability to the Customer.

## **Part 2 - Provision of 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 System Care Maintenance")

### **Clifton IT Responsibilities**

18) Clifton IT will, subject to these Terms, provide the System Care Maintenance in accordance with the terms of the Scope of Service.

19) Clifton IT will use its reasonable endeavours to respond to a valid Call within the response time set out in the Scope of Service.

20) Clifton IT 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.

21) If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, Clifton IT will use its reasonable endeavours to visit the Installation Address within the response times set out in the Scope of Service.

22) When carrying out work in accordance with these Terms, Clifton IT will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer's applications.

23) Clifton IT 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

Clifton IT.

24) Clifton IT may repair the Equipment away from the Installation Address when it considers it necessary to do so.

25) Clifton IT 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 Clifton IT's property and will be returned to Clifton IT on demand. The Customer is entirely responsible for such equipment and will indemnify Clifton IT in respect of any loss or damage to that equipment.

26) Clifton IT 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.

27) Where Clifton IT is required to carry out or does carry out work that is subsequently found to be outside System Care Maintenance, Clifton IT will be entitled to charge for that work at Clifton IT's then current rates.

### **Term**

28) System Care Maintenance will commence on the date set out in the Scope of Service and subject to these Terms, continue unless and until either party serves at least three months prior written notice of termination on the other party. This must be served at least three months before the expiry of either the Initial Term or any annual anniversary date thereafter.

### **Period of Availability**

29) Clifton IT will only provide System Care Maintenance during the Scheduled Service Hours. If the Customer requests Clifton IT to carry out any System Care Maintenance outside the Scheduled Service Hours then, Clifton IT will use its reasonable endeavours to comply with this request but will charge the Customer for such services at Clifton IT's then current rates.

30) These terms and conditions apply to the sale, licence and maintenance (as applicable) by Clifton IT of any computer hardware or software or other similar or associated items or materials. These terms are divided into three parts; Sales, System Care Maintenance and General. The General Terms apply to all contracts of Clifton IT. The remaining terms apply depending upon the service to be provided by Clifton IT.

31) The time taken by Clifton to respond to a Call will only be measured during the Scheduled Service Hours.

### **Customer Responsibilities**

32) 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.

33) 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 Clifton IT from time to time.

34) The Customer will ensure that only personnel authorised by Clifton IT adjust, modify, configure, maintain, repair, replace or remove any part of the Equipment.

35) The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide Clifton IT with such information and assistance concerning the Equipment, its application, use, location and environment as Clifton IT may reasonably require to enable it to carry out the System Care Maintenance.

36) The Customer will immediately notify Clifton IT if there is any failure of the Equipment and will allow Clifton IT full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the System Care Maintenance.

37) The Customer will ensure that relevant trained and experienced staff are available when required by Clifton IT to provide Clifton IT with information required by Clifton IT to diagnose and/or repair the Equipment.

38) Where Clifton IT 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 Clifton IT.

39) The Customer must tell Clifton IT in writing immediately that the Equipment or any part of it is changed.

40) The Customer will notify Clifton IT of change in the location of any part of the Equipment. Whilst any Equipment is being moved, all Clifton IT's obligations to provide the System Care Maintenance will be suspended. The 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.

41) Unless specifically included in the Scope of Service, the Customer is responsible for the cost of any Third Party Software upgrades which Clifton IT advise are required.

42) It is the Customer's sole responsibility, in a manner acceptable to Clifton IT, 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 Clifton IT when required unless such backup is Part of the Scope of Services.

43) 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.

44) The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Equipment.

### **System Audit**

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

### **Service Exclusions**

46) The System Care Maintenance does not extend to:

*(a) 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;*

*(b) any Equipment which was, in Clifton IT's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of the System Care Maintenance;*

*(c) any work arising as a result of any breach by the Customer of any of its obligations under these Terms;*

*(d) 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 Clifton IT;*

*(e) any failure or defect caused by hardware or software not covered by these Terms;*

*(f) failures or defects due to manufacture or design defects over which Clifton IT has no control;*

*(g) refurbishment or repair of casings or outer surfaces; any work to*



*accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Scope of Service;*

*(h) reinstatement of customised versions of the standard desktop/operating system; reinstatement of the Customer's software and data not identified within the Scope of Service; any consultancy, training or software or hardware Clifton IT may provide;*

*(i) integration of the Equipment or any part thereof with other systems;*

*(j) cleansing of viruses and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software;*

*(k) upgrading the Operating Platform to be able to operate the Customer's selected software applications;*

*(l) consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the Scope of Service;*

*(m) any Equipment in respect of which a notice has been served by Clifton IT under clauses 47 or 48;*

*(n) 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 Clifton IT;*

*(o) 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.*

### **Beyond Reasonable Repair**

47) Clifton IT 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 Clifton IT to provide the 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, Clifton IT 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.

48) The provisions of clause 47 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of Clifton IT, is no longer economically viable to maintain or requires upgrading or updating.

### **Pre Inspection**

49) Prior to commencement of the System Care Maintenance, Clifton IT may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address to confirm that it is, in Clifton IT'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 Clifton IT will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, Clifton IT may on written notice exclude such equipment from 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 - 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 System Care Maintenance provided or to be provided to the Customer.

### **General**

50) These Terms may only be amended, or varied with Clifton IT'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.

51) 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.

52) Headings in these Terms are for convenience only and have no effect on the interpretation.

53) 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.

### **Specification**

54) The description of any Goods contained in any invoice, order form, descriptive matter, specifications, catalogue or advertising material published or issued by Clifton IT 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 Clifton IT may be corrected by Clifton IT without any liability on the part of Clifton IT.

55) Clifton IT 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 System Care Maintenance provided that this does not materially affect the performance of the Goods or the System Care Maintenance.

### **Prices**

56) 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.

57) The Charges quoted in the Scope of Service are for the 12 month Initial Term only. The annual Charges for any subsequent 12 month period (excluding any additional payments due under the Terms) will be as notified by CLIFTON IT to the Customer in writing at least 30 days before any such price change is implemented. Charges for all other goods and services provided by Clifton IT can be amended at any time subject to providing at least 30 days notice before any such price change is implemented.

58) All waiting time spent by any employees or agents of Clifton IT (which includes any time which had been allocated to a Customer by Clifton IT 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 Clifton IT, of dates of scheduled service visits or otherwise) will be payable by the Customer to Clifton IT at Clifton IT's then applicable hourly rate.

### **Payment**

59) In respect of the System Care Maintenance for the Initial Term the Customer will pay the Charges to Clifton IT on the date(s) set out in the Scope of Service and thereafter monthly within 30 days after the date of Clifton IT's invoice.

60) In respect of the sale of all other Goods and services:

*(a) Payment will be made by the Customer on the date(s) agreed in writing between the Customer and Clifton IT at the point of order for the Goods or the requirement for services in accordance with these Terms.*

*(b) 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 Clifton IT may invoice the Customer at any time after the Goods become available.*

*(c) Clifton IT may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.*

*(d) Any quantity discount given by Clifton IT at the point of order may be removed if the order quantity is subsequently reduced.*

61) If no payment date has been agreed then payment by the Customer will be made within 30 days after the date of Clifton IT's invoice.

62) 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 Clifton IT may agree, at the intervals agreed in writing with Clifton IT.

63) If the Customer fails to make any payment due to Clifton IT (whether under these Terms or otherwise) on its due date then Clifton IT may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by Clifton IT to the Customer or appropriate any money received from the Customer against such sums as Clifton IT may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, Clifton IT will be entitled to suspend the performance of any 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 Clifton IT to the Customer.

64) All payments due to Clifton IT under these Terms will be paid in full without any set off, deduction, counterclaim or withholding of any sum for whatever reason.

65) Clifton IT 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.

## **Lease**

66) If any payments due to Clifton IT in respect of the Goods or the 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 Clifton IT for the Goods and/or the System Care Maintenance in accordance with these Terms.

### **Clifton IT Employees**

67) The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of Clifton IT's representatives who visit any premises of or on behalf of the Customer;

68) The Customer will fully indemnify and hold harmless Clifton IT 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.

### **Liability**

69) 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 Clifton IT for any fraudulent misrepresentation.

70) 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.

71) The Customer accepts that in respect of the sale of the Goods, whilst Clifton IT will endeavour to use its expertise and experience to advise the Customer, Clifton IT 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 Clifton IT of its requirements, both present and anticipated, in respect of the Goods.

72) If Clifton IT 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 Clifton IT'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,

73) Without prejudice to clause 72 if Clifton IT fails to provide System Care Maintenance in accordance with its obligations hereunder, the total Liability of Clifton IT 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 System Care Maintenance in question.

74) Except in the case of death or personal injury caused by Clifton IT's negligence, or liability for defective products under the Consumer Protection Act 1987, Clifton IT 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 Clifton IT had been advised of the possibility of such potential loss.

75) Except in the case of death or personal injury caused by Clifton IT's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall Clifton IT's Liability in respect of any Loss to the Customer exceed £50,000.00.

76) Except in the case of death or personal injury caused by Clifton IT'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.

77) Clifton IT will have no liability under these Terms or otherwise to the Customer arising out of:

*(a) 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;*

*(b) 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 Clifton IT in accordance with these Terms or any other reason;*

*(c) 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); and if any damage to any of the program*

*or data files of the Customer occurs then Clifton IT'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 Clifton IT will charge the Customer for the cost of such assistance at Clifton IT's then current rates.*

### **Warranties**

78) The Customer warrants and represents that the use by Clifton IT of any data, materials or equipment supplied by the Customer for use by Clifton IT in the provision of the System Care Maintenance, will not infringe the intellectual property rights of any third party and the Customer will fully indemnify Clifton IT in this respect.

### **Confidentiality**

79) 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.

### **Performance**

80) Clifton IT 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 Clifton IT in which event Clifton IT 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 Clifton IT may cancel this Contract (or any part thereof ) without liability to the Customer.

### **Sub-Contracts**

81) Clifton IT may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time. Clifton IT is a member of a group of companies and accordingly Clifton IT may perform any of its obligations or exercise any of its rights under this Contract through any member of its group.

82) 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 Clifton IT and on such terms as Clifton IT may reasonably require.

83) 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.

### **Termination**

84) Clifton IT 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 Clifton IT may elect (including stopping any Goods in transit) if:

*(a) the Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within seven days of a written notice detailing the breach;*

*(b) 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);*

*(c) the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets; the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt; the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;*

*(d) the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;*

*(e) in the case of a sole trader or partnership anything analogous to any of the above occurs.*

85) Due to the nature of Clifton IT's service agreement any agreement shall automatically renew for a 12 month period after the initial 12 month term.

*(a) The Customer must give 3 months' notice prior to the end of the 12 month period to terminate the agreement*

86) On termination of the Contract any licence to use software granted by Clifton IT will immediately terminate and the Customer will return to Clifton IT 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 Clifton IT 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.

87) If the Customer terminates this Contract (or Clifton IT terminates by reason of



any acts or omissions of the Customer) then

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

*(b) in respect of the System Care Maintenance if the termination occurs prior to the end of the Contract Term, Clifton IT 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 Clifton IT has reasonably incurred in equipping itself to deliver the System Care Maintenance and which have not been fully recovered by Clifton IT from the Charges paid by the Customer at the date of termination.*

#### **Data Protection**

88) 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.

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

90) The Customer acknowledges that any data transmitted over the Internet cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that Clifton IT has no liability for the loss, corruption or interception of any such data.

#### **Non Solicitation**

91) The Customer acknowledges the investment made by Clifton IT in the training of Clifton IT's Personnel and the commercial interest which Clifton IT has in retaining their services.

92) The Customer agrees that if any of the Clifton IT Personnel who have provided all or any part of any services for or on behalf of Clifton IT to the Customer within 3 months of leaving the employment or engagement of Clifton IT accepts an Engagement with the Customer then the Customer will pay to Clifton IT such sum as represents 30% of the anticipated annual salary or other sums to be paid by the Customer to such person(s) within the first year of such Engagement.

93) For the purpose of this clause 92 references to the Customer will include any person or entity to whom such person(s) is introduced (directly or indirectly) by the

Customer.

### **Notices**

94) 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.

### **Law and Jurisdiction**

95) 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.

96) 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.

### **Entire Agreement**

97) These Terms and the Scope 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 Clifton IT for any fraudulent misrepresentation. Call Communication received by Clifton IT from the Customer reporting a defect or malfunction in the Equipment.