



IT SOLUTIONS

ISM IT Ltd  
Suite S15 & S16  
Lasyard House  
Underhill Street  
Bridgnorth, Shropshire  
WV16 4BB

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## STANDARD SERVICE TERMS AND CONDITIONS – JUNE 2020

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### BACKGROUND:

ISM IT Ltd. a company incorporated in England with company number 12167294 and having our registered office at Suite S15 & S16, Lasyard House, Underhill Street, Bridgnorth, Shropshire WV16 4BB. (the “Service Provider”) provides IT Consultancy, Support and Services to business clients. The Service Provider has reasonable skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients.

### 1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Agreement”</b>	means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;
<b>“Business Day”</b>	means, any day, other than Saturday, Sunday or Bank Holiday (as designated in English and Welsh law).
<b>“Business hours”</b>	Means from 8.30am to 5.00pm. In addition, service may be available at other times at the Service Provider’s discretion.
<b>“Year”</b>	means a calendar year starting on the date of commencement of the particular service in relation to which the term is used or any anniversary thereof
<b>“Client”</b>	means the party procuring the Services from the Service Provider who shall be identified in the Agreement;
<b>“Helpline Support”</b>	means the [telephone] AND/OR [website] based support which shall be provided as specified in accordance with Clause 2;
<b>“Commencement Date”</b>	means the date on which provision of the Services will commence, as defined in the Agreement;
<b>“Confidential Information”</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

- “Fees”** means any and all sums due under the Agreement from the Client to the Service Provider, as specified in the Agreement;
- “Services”** means the services to be provided by the Service Provider to the Client in accordance with Clause 2 of the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement; and
- “Term”** means the term of the Agreement as defined therein.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
  - 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
  - 1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## 2. **Provision of the Services**

- 2.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Client.
- 2.2 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the IT sector in the United Kingdom.
- 2.3 The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement, and comply with any relevant English and Welsh law.
- 2.4 The Service Provider shall 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 Services.



- 2.5 The Service Provider may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.
- 2.6 The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.
- 2.7 The Service Provider will provide technical advice and assistance to the Client, via telephone, email or a visit to the client's premises. Initial response will be given within 4 working hours with most issues expected to be resolved within 4 to 8 working hours.
- 2.8 The Service Provider, subject to 2.2.2. does not undertake to repair all problems. If we cannot resolve a problem then you will be notified as soon as that becomes apparent. The chargeable basis is that all work is carried out at an hourly rate and you will be invoiced for all the hours worked as the Company does not operate a "No Fix No Fee" service unless otherwise agreed.

### 3. **Client's Obligations**

- 3.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services, and to ensure such information is current.
- 3.2 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 3.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 3.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 3.5 If the nature of the Services requires that the Service Provider has access to the Client's business premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client as required.
- 3.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 3 of the Agreement shall not be the responsibility or fault of the Service Provider.
- 3.7 Where provision of the service requires a hardware solution delivered to the Client's



premises, such hardware should be inspected by the Client immediately after delivery and notification of any damage or defects given to the Service Provider within 48 hours.

#### 4. Fees & Payment

- 4.1 The Client shall pay the Fees to the Service Provider in accordance with the provisions of the Agreement. If agreed in writing, the Service Provider may provide services outside the Business Hours in return for an appropriate remuneration.
- 4.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of the Agreement.
- 4.3 Where credit terms are offered, all payments under the Agreement to be made within 14 Business Days of receipt by the Client of the relevant invoice.
- 4.4 All payments required to be made pursuant to the Agreement shall be made in GBP in cleared funds to a bank in the United Kingdom as the Service Provider may from time to time nominate
- 4.5 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next Business Day.
- 4.6 Without prejudice to sub-Clause 8.4.1 of the Agreement, any sums which remain unpaid following the expiry of the period set out in sub-Clause 4.3 of the Agreement shall incur interest on a daily basis at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998, from time to time until payment is made in full of any such outstanding sums.
- 4.7 The Service Provider has the right to revise prices for any goods or services at any time to take into account increases in costs including, without limitation, any taxes on goods and services, duties, levies or exchange rates or costs arising as a result of site conditions, delays, interruptions, lack of information and any other factor beyond the Service Provider's control.
- 4.8 If payment remains outstanding 12 weeks after the invoice date, the debt will be passed to our third party debt collection agency

#### 5. Liability, Indemnity and Insurance

- 5.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 5.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 5.3 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sum defined therein.
- 5.4 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.
- 5.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude



the Service Provider's liability for death or personal injury.

- 5.6 Subject to sub-Clause 5.3 of the Agreement the Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's breach of the Agreement.
- 5.7 The Client shall indemnify the Service Provider against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by the Client or its agents or employees.
- 5.8 The Service Provider may implement solutions, such as data backup systems, for the Client that require their management input. Written instructions as to what the Client is required to do will be provided however, it is the Client's sole responsibility to carry out these instructions and to inform the company of any issues that arise. The Client shall assume the entire risk of the losses, corruption or destruction of data or the consequences thereof as a result of any failure to complete the instructions specified.
- 5.9 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

## 6. Guarantee

- 6.1 Any new hardware provided to the Client by the Service Provider to remedy any breakdown or failure of the technology system shall be covered by the manufacturer's warranty. It is the Client's responsibility to return the warranty card (if applicable) to the manufacturer. The Service Provider does not assume any responsibility for any malfunction of the new hardware. In the event of any malfunction of the new hardware, the client should contact the Service Provider, who will liaise with the distributor.
- 6.2 If the hardware provided by the Service Provider is second-hand, the Client shall be informed of this fact and be provided by the Service Provider with a limited warranty, the terms and conditions of which will be explained to the Client at the time of purchase. Unless otherwise expressly agreed, the Service Provider does not warrant the replacement of defective hardware or parts of hardware.
- 6.3 The Client is responsible for the custody and maintenance of hardware once delivered to their premises and should ensure there is adequate protection and comprehensive insurance to cover all risks. The hardware shall remain the property of the Service Provider until all payments under this agreement and on any other account whatsoever have been made in full and unconditionally. Whilst the title to the property is with the Service Provider it should be kept separate and be easily identifiable. Hardware may not be resold until title has passed from the Service Provider to the Client, once payment has been received in full.
- 6.4 In the event of failure to pay for the hardware upon the due date, the Service Provider shall be entitled to, at its discretion, render the item unusable or recover the hardware from the Client. This entitlement being additional to (and not in



substitution for) any other entitlement by operation of law or implication or otherwise, and for such purpose, the client grants the Service Provider, its agents and employees an irrevocable licence to enter upon any premises or land occupied or owned by them to repossess the hardware.

## 7. **Ethics, Health & Safety**

- 7.1 The Service Provider operates on the basis of mutual respect between business personnel. As such aggressive behaviour cannot be tolerated especially during times of business crises. Reported incidents of poor standards of behaviour will be investigated and appropriate remedies applied.
- 7.2 The Service Provider makes security the highest priority and will take best efforts to ensure all IT equipment remains free from the range of threats. However, the Service Provider shall not be responsible for, without limitation, penetration into the systems by such threats and the consequences thereof
- 7.3 The Service Provider does not accept responsibility for ensuring that the Client's systems are free from items which are in infringement of copyright. Where breaches are found the Client will be informed and the remedies they need to undertake. The Service Provider will not be held responsible in respect of legal costs, fines or loss of profits as a result of copyright infringements, even if the Service Provider was aware of such an infringement.
- 7.4 It is the Client's responsibility to ensure that The Service Provider's staff are aware of and in compliance with their Health and Safety regulations. On completion of any works it will be the Client's responsibility to ensure that they comply with their standards and any issues must be raised with the Service Provider's staff prior to them leaving site in order for them to effect a suitable remedy.
- 7.5 Any software programming, documentation and solution provided by the Service Provider will remain its Intellectual Property unless otherwise agreed in writing.

## 8. **Confidentiality**

- 8.1 The Service Provider is registered under the Data Protection Act 2018 and, save where compelled to do so by law, the Service Provider will not access the content of any files which The Client has entrusted in the Service Provider save with their express written permission.
- 8.2 In respect of the Client's confidential or personal information, held by the Service Provider, it will never sell or give this to third parties. It will only be used to contact The Client regarding (a) service issues, (b) security issues, (c) special offers or (d) information regarding other services of the Service Provider.
- 8.3 Each Party undertakes that, except as provided by sub-Clause 8.4 of the Agreement or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and after its termination:
  - 8.3.1 keep confidential all Confidential Information;
  - 8.3.2 not disclose any Confidential Information to any other party;

- 8.3.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
  - 8.3.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 8.3.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 8.3.1 to 8.3.4 of the Agreement.
- 8.4 Either Party may:
- 8.4.1 disclose any Confidential Information to:
    - 8.4.1.1 any sub-contractor or supplier of that Party;
    - 8.4.1.2 any governmental or other authority or regulatory body; or
    - 8.4.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 8.4.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 8 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
  - 8.4.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.
- 8.5 The provisions of Clause 8 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

## 9. Force Majeure

- 9.1 For the purposes of the Agreement, Force Majeure Event means an event beyond the reasonable control of the Service Provider including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Service Provider's or any other party), failure of a utility service (power / internet provision) or transport network, act of God, war, terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, earthquakes storm or default of suppliers or subcontractors or any other event that is beyond the control of the Party in question.



- 9.2 No Party to the Agreement 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
- 9.3 If the Force Majeure Event prevents the Service Provider from providing any of the Services for more than 72 hours, the Service Provider shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Client..

## 10. Term and Termination

- 10.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of Clause 11 of the Agreement.
- 10.2 Monthly paid agreements remain in force for a minimum time period of 12 months from the Commencement Date, as specified on the Agreement, unless sooner terminated in accordance with these terms. The term period is that shown in the contract. If notice of termination in accordance with section 10.3 is not received prior to the anniversary date then the agreement will automatically roll over into a further time period.
- 10.3 Either Party may terminate the Agreement by giving to the other not less than 30 business days written notice, to expire on or at any time after the minimum term defined in the Agreement.
- 10.4 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
  - 10.4.1 any sum owing to the Service Provider under any of the provisions of the Agreement is not paid within 90 Business Days of the due date for payment;
  - 10.4.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice stating full particulars of the breach and requiring it to be remedied;
  - 10.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - 10.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 10.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
  - 10.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;





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10.4.7 the other Party ceases, or threatens to cease, to carry on business; or

10.4.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 10, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

10.5 For the purposes of sub-Clause 10.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

10.6 The rights to terminate the Agreement shall not prejudice any available statutory right or remedy of either Party in respect of any breach.

## 11. **Effects of Termination**

Upon the termination of the Agreement for any reason:

11.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;

11.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;

11.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;

11.4 subject as provided in Clause 11 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

11.5 each Party shall (except to the extent referred to in Clause 8 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

## 12. **No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## 13. **Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.



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**14. Costs**

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

**15. Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

**16. Assignment and Sub-Contracting**

16.1 The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

16.2 Any and all Services and licences provided through the Service Provider by a third party are subject to the Terms and Conditions of the third party

**17. Time**

The times and dates referred to in the Agreement shall be for guidance only and shall not be of the essence of the Agreement and may be varied by mutual agreement between the Parties.

17.1

**18. Relationship of the Parties**

Nothing in the 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 the Agreement.

**19. Notices**

19.1 All notices under the Agreement 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.

19.2 Notices shall be deemed to have been duly given:

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

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

19.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## 20. **Entire Agreement**

- 20.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 20.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 20.3 The Service Provider is unable to contract under any other terms and conditions presented to us by you at any time. If you do present us with alternative terms and conditions at any time, (Battle of the Forms) the terms and conditions outlined in this agreement shall have effect, and your terms and conditions will have no effect.

## 21. **Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## 22. **Severance**

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that/those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

## 23. **Non-Solicitation**

23.1 Neither Party shall, for the term of this Agreement and for a period of 6 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to this Agreement without the express written consent of that Party.

23.2 Neither Party shall, for the term of this Agreement and for a period of 6 months after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.



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**24. Dispute Resolution**

- 24.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 24.2 Nothing in Clause 22 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

**25. Law and Jurisdiction**

- 25.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 25.2 Subject to the provisions of Clause 23 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

**26. Data Protection, The Data Protection Act 2018 and the EU: General Data Protection Regulation 2016**

- 26.1 These Terms and Conditions must be read in conjunction with the Service Providers Privacy statement.