

PLAN-IT BUSINESS SYSTEMS

Terms and Conditions of Business

PART A : TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Plan-It's Obligations

1.1 Plan-It shall subject to these Conditions:

1.1.1 sell the Goods to the Customer;

1.1.2 deliver the Goods to the Site; and

1.1.3 (if so specified in the Contract Details) install the Goods at the Site.

2. Validity

2.1 No order is deemed to be accepted nor any contract made with Plan-It until an acknowledgment of such order or contract in writing has been made by Plan-It to or with the Customer and Plan-It's right is reserved (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery on the failure of any of the Customer's obligations under the Contract to Plan-It, whether or not relating to the Goods.

2.2 Plan-It reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable legal requirements. The Customer accepts that Plan-It is a distributor of goods and is not responsible for any variations made by the manufacturer or for failure to supply any Goods as a result of shortage of supplies.

2.3 No order which has been accepted by Plan-It may be cancelled by the Customer except with the prior agreement in writing of Plan-It and, without prejudice to any of Plan-It's other rights and remedies, on terms that the Customer shall indemnify Plan-It in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Plan-It as a result of cancellation.

2.4 Where the Goods include software the Intellectual Property Rights in which are owned by a third party (the "Software Owner"), the performance by Plan-It of its obligations under the Contract is in all respects conditional on the Customer entering into on the date of the delivery of the Goods an end-user licence agreement with the Software Owner governing the use by the Customer of that software as may be required by the Software Owner. The Customer shall be bound by and abide by the terms of each such licence agreement.

3. Purchase Price and Payment

3.1 Payment for the Goods, delivery and (if applicable) installation shall be made by the Customer to Plan-It within 30 days of the date of Plan-It's invoice.

3.2 Plan-It reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Plan-It which is due to any factor beyond the control of Plan-It (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Plan-It adequate information or instructions.

3.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Plan-It, Plan-It shall be entitled at its sole option to:

3.3.1 cancel the Contract or suspend any further deliveries of goods or the provision of services to the Customer under any contract it has with the Customer; and

3.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods or services supplied under any other contract between the Customer and Plan-It) as Plan-It may think fit (notwithstanding any purported appropriation by the Customer).

4. Site preparation

- 4.1 Plan-It shall supply to the Customer in reasonable time before delivery of the Goods such information as may be reasonably necessary to enable the Customer to prepare the Site for the installation of the Goods.
- 4.2 The Customer shall at its own expense prepare the Site and provide such environmental and operational conditions prior to delivery in accordance with such information given by Plan-It.

5. Delivery and Installation

- 5.1 Whilst delivery dates are given by Plan-It in good faith based upon information available to Plan-It, such dates are not guaranteed and Plan-It accepts no liability for delay in delivery or completion of performance of installation howsoever caused. No delay of less than 28 days shall entitle the Customer to cancel any such delivery or any further instalments or part of the Goods or to repudiate the Contract or the order or any part thereof or to claim any damages or compensation in respect of any such delay.
- 5.2 If the Customer fails to accept delivery, the Goods may be stored by Plan-It at the Customer's risk and expense until acceptance by the Customer.
- 5.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Plan-It to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 5.4 If Plan-It fails to deliver the Goods (or any instalment) for any reason other than any cause beyond Plan-It's reasonable control or the Customer's fault, and Plan-It is accordingly liable to the Customer, Plan-It's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6. Risk of Loss

- 6.1 The risk of loss or damage to the Goods shall pass to the Customer when Plan-It delivers the Goods to the Site or, if the Customer wrongfully fails to take delivery of the Goods, when tendered for delivery at the Site.
- 6.2 The Customer shall be responsible for all costs of insurance of the Goods from the time that risk of loss passes to the Customer.

7. Warranty

- 7.1 Subject to the limitations upon its liability set out in Part E Condition 1 Plan-It warrants that:
- 7.1.1 it will perform the installation of the Goods and all other services with reasonable care and skill; and
- 7.1.2 (subject to Condition 7.4) its title to and property in the Goods is free and unencumbered.
- 7.2 The Customer shall give written notice to Plan-It as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 7.3 Without prejudice to the foregoing Plan-It does not warrant that the operation of the Goods will be uninterrupted or error free or that any software supplied with the Goods will be free of bugs.
- 7.4 Where the Goods include computer software products, the Customer acknowledges and accepts that, in accordance with trade practice, many suppliers of such products retain title to the Intellectual Property Rights in such products. Accordingly, Plan-It only transfers such title as it may have to such products, and (subject to Condition 7.1) no warranties whether express or implied are given in respect of such products.
- 7.5 So far as it is able Plan-It shall transfer or assign as appropriate to the Customer all and any warranties relating to any element of the Goods and any software supplied with the Goods of which it has the benefit (if any) and following any such transfer or assignment Plan-It shall not, subject to Part E Condition 1.3, be liable to the Customer to the extent that any matter is covered by those warranties.

- 7.6 Subject to the foregoing, all conditions, warranties, terms and undertakings, express, implied, statutory or otherwise in respect of the supply and installation of the Goods are hereby excluded to the fullest extent permitted by law. All descriptions, drawings and particulars relating to the goods in any catalogues, leaflets, brochures or other documents are for illustrative purposes only and do not form part of the agreement between Plan-It and the Customer. All representations as to performance of the Goods are based on information supplied by the manufacturer of the Goods and relate to their performance in normal conditions and when used correctly in accordance with the manufacturer's installation and user instructions.
- 7.7 Any claim by a Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with a particular specification shall (whether or not delivery is refused by the Customer) be notified to Plan-It within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify Plan-It accordingly, the Customer shall not be entitled to reject the Goods and Plan-It shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 7.8 If the Goods are inoperable as a result of a failure of another supplier or contractor to commission services connected to the Goods (such as British Telecom lines), Plan-It shall not be liable.

8. Retention of Title

- 8.1 The property in the Goods shall pass to the Customer when, and shall not pass to the Customer until, Plan-It has been paid for them in full in cleared funds together with the full price due to Plan-It for any other goods the subject of any other contract between Plan-It and Customer.
- 8.2 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Plan-It's fiduciary agent and bailee, and shall keep the Goods properly stored, protected and insured and identified as Plan-It's property although the Customer shall have the right to use the Goods in the normal course of its business.
- 8.3 In the event of the Customer becoming insolvent or having a receiver appointed of the whole or any part of its property or compounding with its creditors or going into liquidation or in the event of payment for any of the Goods being overdue then and in any such event it shall be lawful for Plan-It, its servants, officers or representatives to enter upon the Customer's premises and recover possession of any of the Goods for which Plan-It has not been paid and to take away such Goods.
- 8.4 Until such time as the property in the Goods passes to the Customer, Plan-It shall be entitled at any time to require the Customer to deliver up the Goods to Plan-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.
- 8.5 This Condition 8 does not entitle the Customer to return the Goods or to refuse or delay payment on the grounds that the property has not yet passed nor shall it constitute an agency.
- 8.6 The Customer appoints Plan-It its agent with full authority to execute on its behalf any document or instrument which may be required in order to perfect Plan-It's title and interest in the Goods.
- 8.7 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Plan-It, but if the Customer does so all monies owing by the Customer to Plan-It shall (without prejudice to any other right or remedy of Plan-It) forthwith become due and payable.

9. The Customer's Use of the Goods

- 9.1 The Customer shall be responsible for and agrees to train and instruct users of the Goods on the safe and proper use of the Goods and the Customer shall ensure that where the Goods are accompanied by an instruction leaflet or user manual all persons using the Goods shall read such instruction leaflet or user manual. Further, the Customer shall be responsible for and agrees to maintain in good working order the safety features installed on the Goods. The Customer agrees to indemnify and hold Plan-It harmless from and against any liability, damages, costs and expenses, including legal fees and expenses, which may be incurred by Plan-It as a result of the Customer's failure to comply with the requirements of this Condition.
- 9.2 If the Goods sold to the Customer should have been accompanied by an instruction leaflet and the Customer finds that no such instruction leaflet has been delivered with such Goods the Customer shall ensure that it obtains the relevant

instruction leaflet relating to such Goods either from the manufacturer of the Goods or from Plan-It prior to the Customer or its employees, servants or agents using such Goods.

PART B : SOFTWARE SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

1. Problem Notification

- 1.1 Subject to payment by the Customer of the Support Fees to Plan-It and the Customer's compliance with its obligations under Condition 4, if the Customer becomes aware of a problem with the Software it may contact Plan-It's helpdesk by telephone.
- 1.2 When notifying Plan-It of a problem with the Software, the Customer shall provide as much detail as possible including wherever possible:
 - 1.2.1 the exact circumstances or events or combinations of events or circumstances in which the problem exists or appears;
 - 1.2.2 details of any changes which have been made in the Customer's system in the period leading up to the first occurrence of the problem;
 - 1.2.3 access to, electronic copies, or print-outs of all relevant data, including screen prints and reports; and
 - 1.2.4 any other information which Plan-It requests.

2. Support

- 2.1 Support consists of Plan-It, following receipt by telephone, email or fax from the Customer of the necessary details of a problem set out in Condition 1.2, providing the following services during Working Hours:
 - 2.1.1 carrying out at Plan-It's offices, by consideration of the information supplied by the Customer, investigation of the problem;
 - 2.1.2 using reasonable endeavours as soon as reasonably practicable to:
 - (a) suggest procedures which are intended to alleviate the problem;
 - (b) provide advice which will enable the Customer to correct corrupt data; or
 - (c) liaise with the proprietors of the Software to try to find a solution; and
 - 2.1.3 providing general advice and assistance on the use of the Software.

3. Maintenance

If the Contract Details state that the Contract includes Maintenance, then provided that the Customer pays the Maintenance Fees in accordance with the provisions of Condition 5, Plan-It will provide the Maintenance, which will consist of using reasonable endeavours during Working Hours as soon as reasonably practicable to:

- 3.1 diagnose problems and to liaise with the relevant software owner in order to manage the problem; and
- 3.2 identify an appropriate fix or change that can be made using tools or fixes issued by the relevant software owner.

4. Customer's Obligations

- 4.1 The Customer shall, at all times it requires Support and/or Maintenance:
 - 4.1.1 ensure that the environmental conditions at the Site (as approved by Plan-It from time to time) are maintained at all times;
 - 4.1.2 ensure that Plan-It's engineers have full and free and timely access to the Software by prior arrangement

with the Customer, provide adequate working and storage space, and such other facilities as the engineer may reasonably require and observe any common law or statutory requirements relating to health and safety; and

4.1.3 where servers are used for software applications supplied by Plan-It, ensure that the data is backed up daily, regular housekeeping is carried out on the servers and an archive procedure exists.

4.2 Unless otherwise agreed in writing by Plan-It, the Software must not in any circumstances be altered, adjusted or interfered with except by Plan-It authorised engineers unless routine operation and Support and/or Maintenance is undertaken by Customer staff and only to the extent that they have been instructed how to do so at an official Plan-It training course.

5. Payment of Support Fees and Maintenance Fees

5.1 The Support Fees and (if applicable) the Maintenance Fees are payable annually in advance unless Plan-It receives a standing order mandate signed by the Customer authorising payment quarterly in advance.

5.2 Plan-It shall have the right to suspend the provision of the Support and/or Maintenance if at any time the Customer is late in paying any Support Fees and/or Maintenance Fees due.

5.3 The Support Fees and/or Maintenance Fees may be adjusted by Plan-It at any time in order to reflect the increased cost of providing the Support and/or Maintenance in the event that:

5.3.1 the Software is no longer a current release and the Customer refuses to purchase an upgrade known to rectify a fault;

5.3.2 the Customer requests Plan-It to provide Support and/or Maintenance in respect of additional software. In this event the Support Fees and/or Maintenance Fees shall be increased by the rate applied by Plan-It at the relevant time for the Support and/or Maintenance of the additional software.

5.4 If the Support Fees and/or Maintenance Fees are increased during a period for which the Customer has paid in advance, Plan-It shall be entitled to invoice the Customer for the additional Support Fees and/or Maintenance Fees payable for the remainder of that period.

5.5 In addition to any adjustment made to the Support Fees and/or Maintenance Fees pursuant to Condition 5.3, Plan-It may at any time following the first anniversary date of the Contract adjust the Support Fees and/or Maintenance Fees. Such adjustments shall not be made at intervals more frequently than once in any twelve month period and will not exceed the greater of the increase in the UK Retail Price Index since the date of the last increase and a reasonable amount to take into account an increase in the costs or market rates in providing the support and/or maintenance.

6. Provisions relating to Support and Maintenance

6.1 Support and Maintenance shall not include the diagnosis and rectification of problems resulting from:

6.1.1 the improper use, operation or neglect of the Software;

6.1.2 the modification of the Software or its merger (in whole or in part) with any other software;

6.1.3 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Plan-It;

6.1.4 any repair, adjustment, alteration or modification of the Software by any person other than Plan-It without Plan-It's prior written consent;

6.1.5 any breach by the Customer of any of its obligations under any maintenance agreement in respect of the hardware on which the Software is used;

6.1.6 the Customer's failure to install or permit the installation of a new release of any operating system software or other ancillary software recommended by Plan-It within the time limit for installation given by Plan-It;

- 6.1.7 the failure of the Customer to run the Customer's system in accordance with the current best practice including without limitation taking full backups of data at frequent intervals; or
- 6.1.8 the use of the Software for a purpose for which it was not designed.
- 6.2 In providing the Support and Maintenance, Plan-It shall use all reasonable care and skill.
- 6.3 If Plan-It is prevented from providing Support and/or Maintenance to the Customer at any time due to the Customer failing to comply with its obligations under these Conditions then (without prejudice to Plan-It's other rights and remedies) the obligation on Plan-It to provide that Support and/or Maintenance shall be postponed until such failure is remedied and Plan-It is able to reschedule the Support and/or Maintenance.
- 6.4 If the Customer requests Plan-It to provide any services not expressly included within the Support and/or Maintenance (as applicable) and if Plan-It agrees to provide the same which decision is within the sole discretion of Plan-It, then such additional services shall be provided pursuant to and subject to these Conditions and Additional Charges shall be payable by the Customer in respect of such services.
- 6.5 The Support and Maintenance do not include attending the Customer's premises. If the Customer requests Plan-It to visit the Customer's premises, then this shall be subject to Additional Charges and payment of Plan-It's reasonable expenses. Once the Customer has booked Plan-It to provide services at the Customer's premises, Plan-It requires two clear Working Days' notice of cancellation. If less than two clear Working Days' notice is given, a charge of 50% of the Additional Charges for the booking will be made.
- 6.6 Subject to the foregoing, all conditions, warranties, terms and undertakings, express, implied, statutory or otherwise in respect of the Support and Maintenance are hereby excluded to the fullest extent permitted by law.

PART C : BESPOKE SOFTWARE DEVELOPMENT

1. Plan-It's Obligations

If the Contract Details state that the Contract includes the development of Bespoke Software, then in consideration of the payment by the Customer of the Development Charge and subject to these Conditions Plan-It shall:

- 1.1 design and write the Bespoke Software;
- 1.2 if so specified in the Contract Details, design and write the Bespoke Software Documentation for use in association with the Bespoke Software; and
- 1.3 license the Customer to use the Bespoke Software in accordance with these Conditions.

2. Variations

- 2.1 The Customer shall be entitled at any time up to the Actual Delivery Date to request in writing Plan-It to modify the design of the Bespoke Software.
- 2.2 The Customer shall provide Plan-It with full details in writing of any requested modification and such further information as Plan-It shall require.
- 2.3 Plan-It shall inform the Customer whether such modification is technically feasible and shall inform the Customer of the alterations to any agreed timetable and the Development Charge that it shall judge necessary to make as a result of such request. The Customer shall then inform Plan-It whether or not it wishes Plan-It to make the modification.

3. Delivery and installation

Plan-It shall use reasonable endeavours to deliver the Bespoke Software Materials to the Customer and, where agreed with Plan-It, install the Bespoke Software by the date agreed between the parties or as soon thereafter as is reasonably possible.

4. Payment and expenses

- 4.1 Unless agreed otherwise between Plan-It and the Customer, half of the Development Charge shall be paid with the Customer's order and half on installation of the Bespoke Software.
- 4.2 Additional Charges (if any) shall be levied by Plan-It monthly in arrears and shall be due and payable by the Customer upon receipt of an invoice therefor.

5. Grant of licence

- 5.1 Subject to these Conditions and in consideration of the payment by the Customer to Plan-It of the Development Charge in accordance with Condition 4, Plan-It grants to the Customer a non-exclusive non-transferable licence to make Permitted Use of the Bespoke Software Materials at the Site in accordance with these Conditions from the Actual Delivery Date and any restrictions on the Permitted Use set out in the Contract Details until the Contract is terminated by Plan-It in accordance with Part E Condition 5.
- 5.2 The Customer shall:
 - 5.2.1 not, save solely for the purposes expressly permitted by and in accordance with s.296A(1) CDPA and s.50B(2) CDPA copy, adapt or decompile the whole or any part of the Bespoke Software and in the event that such decompilation or copying is carried out by the Customer pursuant to s.296A(1) or s.50B(2) CDPA all rights in any resultant source code shall belong exclusively to Plan-It subject to a non-exclusive non-transferable free licence for the Customer to be able to refer to that source code for the purposes of 50B(2) CDPA only on condition that no disclosure of it is made to any third party;
 - 5.2.2 not remove or alter any copyright, trade mark or other proprietary notice or mark on any of the Bespoke Software Materials;
 - 5.2.3 not provide or make available to any third party whether as a gift or for any consideration of any sort any information or knowledge of which it is informed or which it deduces about or relating to the Bespoke Software;
 - 5.2.4 reproduce on any copy (whether in machine-readable or human-readable form) of the Bespoke Software Materials Plan-It's copyright and trade mark notices;
 - 5.2.5 maintain an up-to-date written record of the number of copies of the Bespoke Software Materials and their location and upon request forthwith produce such record to Plan-It;
 - 5.2.6 notify Plan-It immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Bespoke Software Materials by any third party;
 - 5.2.7 promptly notify Plan-It if and when the Bespoke Software is used otherwise than at the Site.
- 5.3 The Customer shall inform all relevant employees, agents and sub-contractors that the Bespoke Software Materials constitute confidential information of Plan-It and that all Intellectual Property Rights in the Bespoke Software Materials are the property of Plan-It and the Customer shall take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this Condition 5.
- 5.4 Save as expressly included in the Permitted Use the Customer shall not be entitled to copy in whole or in part the Bespoke Software Documentation.

6. Intellectual Property Rights

- 6.1 The Customer acknowledges that any and all of the Intellectual Property Rights created, developed, subsisting or used in or in connection with the Bespoke Software Materials are and shall remain the sole property of Plan-It.
- 6.2 In the event that new inventions, designs or processes evolve in performance of or as a result of the Development Work, the Customer acknowledges that the same shall be the property of Plan-It.
- 6.3 The Customer shall indemnify Plan-It on a full indemnity basis against all liabilities, costs and expenses which Plan-It may incur as a result of work done in accordance with the Customer's requirements involving infringement of any Intellectual Property Rights.

7. Warranty

- 7.1 Subject to the limitations upon its liability set out in Part E Condition 1 Plan-It warrants that:
- 7.1.1 it will carry out the Development Work and perform the installation of the Bespoke Software and all other agreed services with reasonable care and skill; and
 - 7.1.2 its title to and property in the Bespoke Software Materials is free and unencumbered.
- 7.2 The Customer shall give written notice to Plan-It as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 7.3 Without prejudice to the foregoing Plan-It does not warrant that the operation of the Bespoke Software will be uninterrupted or error free.
- 7.4 The Customer acknowledges that:
- 7.4.1 it is the Customer's responsibility to implement its application of the Bespoke Software together with any other software and hardware selected by the Customer in combination to meet its requirements;
 - 7.4.2 the Bespoke Software cannot be tested in every possible combination and operating environment, and that it is not possible to produce economically (if at all) computer software known to be error-free or which operate in an uninterrupted manner;
 - 7.4.3 computer software including the Bespoke Software is not error, fault or bug free, nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt computer systems and that the data, information and records they display, retrieve, collate, transfer, calculate or disseminate may be affected by such occurrences, and the Customer agrees that Plan-It shall have no liability to the Customer nor to any other third party for any such occurrences arising in respect of or in relation to the Bespoke Software.
- 7.5 In the event that the Customer discovers a Bespoke Software Inadequacy and notifies Plan-It with full details of the Bespoke Software Inadequacy within the Warranty Period Plan-It shall use reasonable endeavours to correct that Bespoke Software Inadequacy within a reasonable period of time by the provision of additional or replacement software developed by Plan-It.
- 7.6 Notwithstanding anything to the contrary set out in these Conditions, if a Bespoke Software Inadequacy has been caused by any of the factors described in Part B Condition 6.1 then Plan-It shall have no liability to the Customer.
- 7.7 The Customer shall not use or permit to be used any Bespoke Software whilst there is any Bespoke Software Inadequacy outstanding in respect of it if Plan-It notifies the Customer that it is not to use any such Bespoke Software.
- 7.8 Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the implementation of the Development Work, the installation of the Bespoke Software, the Bespoke Software Materials or any other services are hereby excluded.

8. Intellectual Property Rights Indemnity

- 8.1 Plan-It shall indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Bespoke Software Materials by the Customer in accordance with these Conditions during the currency of the Licence infringes the Intellectual Property Rights of said third party (an "Intellectual Property Infringement") provided that the Customer:
- 8.1.1 gives notice to Plan-It of any Intellectual Property Infringement forthwith upon becoming aware of the same;
 - 8.1.2 gives Plan-It the sole conduct of the defence to any claim or action in respect of any Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of Plan-It; and

- 8.1.3 acts in accordance with the instructions of Plan-It and gives to Plan-It such assistance as it shall require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other Court process and the provision of all relevant documents.
- 8.2 Plan-It shall reimburse the Customer its reasonable and proper costs incurred in complying with the provisions of Condition 8.1.
- 8.3 In the event of an Intellectual Property Infringement Plan-It shall make without charge to the Customer such alterations, modifications or adjustments to the Bespoke Software Materials as shall be necessary to make them non-infringing.
- 8.4 Plan-It shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any alteration modification or adjustment to the Bespoke Software Materials without the prior written consent of Plan-It.
- 8.5 The Customer will indemnify Plan-It against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use by Plan-It of any information or material supplied by the Customer for the purpose of enabling Plan-It to prepare and write the Bespoke Software and/or the Bespoke Software Documentation infringes the Intellectual Property Rights of any third party.

PART D : TERMS AND CONDITIONS FOR THE PROVISION OF ISP SERVICE

These Internet Services Provider Standard Terms and Conditions only apply where the Service is provided directly by Plan-IT Business Systems. In all other cases the Terms and Conditions of the Service provider will apply including but not limited to the cases where Plan-IT Business Systems acts as agent, reseller or referrer.

The following terms and conditions apply to the provision of services to you by Plan-IT Business Systems. Once Plan-IT Business Systems has accepted your order by sending you a written confirmation or by commencing the provision of the Service (as defined below):

1. Plan-IT Business Systems shall use reasonable endeavours to provide the service to you specified in your order ("the Service"). You acknowledge and agree that Plan-IT Business Systems does not guarantee the provision of the Service on an uninterrupted basis but that Plan-IT Business Systems shall use reasonable endeavours to meet the service levels, if any, which may have been specified to you. In the event that no Service Levels are specified, Plan-IT Business Systems shall provide the relevant Service with reasonable care and skill. You further acknowledge and agree that Plan-IT Business Systems is constantly revising its Service Levels and that you accept such revised Service Levels from time to time.
2. If Plan-IT Business Systems applies for the registration of a domain name on your behalf as part of the Service you warrant, represent and undertake as follows:
 - (a) That you have the right to use the name which will form the prefix of the domain name; and
 - (b) By requesting Plan-IT Business Systems to apply to register the domain name you agree to comply with the relevant registration authority's terms and conditions as specified from time to time and indemnify and keep Plan-IT Business Systems and its partners fully and effectively indemnified at all times against all costs, claims, liabilities, losses, damages, actions and expenses (including without limitation, legal expenses) arising directly or indirectly from the registration and/or breach by you of this clause 2 including, without limitation, the relevant registration authority's terms and conditions.
3. Plan-IT Business Systems shall use reasonable endeavours during Office Hours to provide advice and support concerning the provision of the Services to you by telephone and shall, where appropriate, seek to provide remote diagnosis and fault corrections. Plan-IT Business Systems shall provide such advice and support with reasonable care and skill. For the avoidance of doubt, Plan-IT Business Systems shall not be obliged to carry out any site visits or otherwise provide support other than by telephone. For the purposes of this clause 3, "Office Hours" shall mean 09.00 to 17.00 on any weekday excluding public and bank holidays in England.
4. Your sole remedy for failure by Plan-IT Business Systems to meet the Service Levels shall be to terminate this Agreement in accordance with clause 15.
5. This Agreement shall commence on the date specified by Plan-IT Business Systems in its confirmation of your order or the

date that Plan-IT Business Systems commences the provision of the Service (whichever is the sooner) and shall continue in force until terminated in accordance with its terms.

6. Plan-IT Business Systems shall use reasonable endeavours to commence the provision of the Service to you by the end of the next Business Day following the day upon which payment in full for the Service is received from you. For the purposes of this Agreement, "Business Day" means any day excluding Saturday, Sunday and any bank or public holiday in England.
7. You must pay Plan-IT Business Systems for the Service at the rate agreed with Plan-IT Business Systems at the time of placing your order as such rate may be revised by Plan-IT Business Systems from time to time and you shall pay such rate in advance on or before the beginning of each payment period as agreed with Plan-IT Business Systems at the time of placing your order ("the due date"). Any failure by you to pay in full by the due date will entitle Plan-IT Business Systems at any time thereafter without notice to you to terminate the provision of the Service with immediate effect.
8. You undertake and agree to:
 - (a) Keep your contact details up to date and forthwith notify us in writing of any amendments;
 - (b) Keep your passwords confidential and only disclose them to such of your employees who need to know them and you will procure that those employees keep such passwords confidential; and
 - (c) Comply with the terms and conditions of use of any third party networks and services used in the provision of the Service which are not directly operated or provided by Plan-IT Business Systems and/or which are not under the control of Plan-IT Business Systems.
9. You acknowledge and agree that:
 - (a) From time to time, the Service may be closed down and suspended in order for work to be carried out relating to the upgrading or maintenance of the Service or for other reasons relating to the provision of the Service. Plan-IT Business Systems shall use reasonable endeavours to give you reasonable notice of such closure and suspension and shall use reasonable endeavours to ensure that such works are carried out as quickly as reasonably practicable;
 - (b) Plan-IT Business Systems is entitled to alter or transfer IP addresses from time to time for any reason whatsoever. Whilst Plan-IT Business Systems shall use reasonable endeavours to give reasonable notice of such alteration or transfer, Plan-IT Business Systems does not guarantee this.
10. All IP addresses supplied are supplied as a non-portable RIPE, ARIN or APNIC PA address space and remain the property of Plan-IT Business Systems and must not be used on termination of the Service and Plan-IT Business Systems shall thereafter be entitled to use such IP addresses for any purpose whatsoever. No IP addresses are transferable to other service providers; and
 - (c) In the case of Services comprising Leased Lines, ADSL or SDSL Plan-IT Business Systems is providing the Service using services provided by third parties and that without prejudice to clause 8(c) Plan-IT Business Systems shall not be liable under this Agreement for a failure or degradation in respect of such Service if it is due to an act or omission of such third party.
11. By submitting your order for the provision of the Service on the terms and conditions of this Agreement you hereby expressly consent to Plan-IT Business Systems using any and all information provided by you from time to time for any purpose whatsoever including, without limitation, the marketing of Plan-IT Business Systems products and/or services to you and the sending to you of emails concerning Plan-IT Business Systems products and services and or any technical announcements by Plan-IT Business Systems concerning the Service and you hereby expressly consent to Plan-IT Business Systems transferring the information to any third party that is a group undertaking of Plan-IT Business Systems (as defined in Section 259 of the Companies Act 1985 (as amended)) anywhere in the world. For the avoidance of doubt, Plan-IT Business Systems will not sell such information to any third party.
12. All copyright, trade marks and other intellectual property rights subsisting or created in the provision of the Service shall remain the property of Plan-IT Business Systems or its licensor and you will not derive any right, title or interest in them. You shall indemnify and keep Plan-IT Business Systems indemnified against any and all losses, claims, liabilities, damages, demands, costs and expenses (including, without limitation, legal costs and expenses) incurred by Plan-IT Business Systems as a result of failure by you to comply with this clause 11.
13. You and Plan-IT Business Systems hereby agree that any information of a confidential or proprietary nature supplied to the other or generated by either party during the term of this Agreement shall not be used by the other, save for the purposes of

this Agreement and shall not be disclosed to a third party, in each case, without the prior written consent of the other, whether during the term of this Agreement or after its termination or expiration.

14. Plan-IT Business Systems may, at its sole option and without any obligation to refund monies paid by you pursuant to clause 7, terminate this Agreement immediately on written notice to you if:
 - (a) Ordered to do so by a court of competent jurisdiction;
 - (b) The use of the Service is or becomes illegal;
 - (c) If there is a breach of this Agreement;
 - (d) The continued use of the Service could cause technical problems on the Internet; or
 - (e) You act in any way or do anything which may reasonably be construed to impugn the trade mark rights of Plan-IT Business Systems or otherwise be detrimental to the business, goodwill or reputation of Plan-IT Business Systems.
15. You may terminate this Agreement immediately by serving written notice on Plan-IT Business Systems Services if Plan-IT Business Systems persistently fails to meet the Service Levels.
16. Plan-IT Business Systems gives no warranty and makes no representation in respect of the Service save as expressly set out in this Agreement and hereby excludes, to the fullest extent permitted by law, all conditions, warranties, terms, undertakings and representations, express or implied, whether by statute, common law or otherwise in relation to such Service.
17. Plan-IT Business Systems shall not be liable to you whether in contract, tort, by statute or otherwise in respect of any loss of profits and/or for any special, indirect, incidental or consequential loss or damage arising out of or in connection with the Service, including without limitation:
 - (a) Loss of revenue; and/or
 - (b) Loss of anticipated savings; and/or
 - (c) Loss of business and/or goods; and/or
 - (d) Loss of goodwill; and/or
 - (e) Loss of use; and/or
 - (f) Loss and/or corruption of data and/or other information; and/or
 - (g) Downtime; and/or
 - (h) Any damage in relation to the procurement of any substitute services.
18. For the avoidance of doubt, neither the types of loss and/or damage specified in sub-clauses (a) to (h) inclusive of this clause 17 nor any similar types of loss and/or damage shall constitute direct loss for the purposes of this Agreement.
19. No waiver by either party of any provisions of this Agreement shall be binding unless made expressly and confirmed in writing. Any such waiver shall not apply to any subsequent or other matter, non-compliance or breach.
20. Notices to either party must be given in writing and sent by first class post, e-mail or facsimile the relevant addresses. A notice shall be deemed delivered within three Business Days of posting in the case of first class post; twenty four (24) hours after sending the e-mail in the case of e-mail and on completion of the transmission as shown in the transmission report the case of facsimile.
21. No person other than a party to this Agreement shall be entitled to enforce any term of it.
22. In no event shall Plan-IT Business Systems' liability to you whether in contract, tort, by statute or otherwise exceed the amount paid by you for the relevant Service.
23. Nothing in this Agreement shall exclude or restrict the liability of either party for fraudulent misrepresentation and/or for death or personal injury arising as a result of the negligence of that party, its officers, employees, agents and/or sub-contractors.

24. The terms and conditions are exclusively governed by English law and you and Plan-IT Business Systems submit to the exclusive jurisdiction of the English courts.

PART E : GENERAL

1. Limitation of Liability

- 1.1 The following provisions set out Plan-It's entire liability to the Customer in respect of:

1.1.1 any breach of its contractual obligations arising under the Contract; and

1.1.2 any representation statement or tortious act or omission including negligence arising under or in connection with the Contract.

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CONDITION 1 OF THIS SECTION E OF THE CONDITIONS.

- 1.2 Any act or omission on the part of Plan-It falling within Condition 1.1 shall for the purposes of this Condition 1 be known as an "Event of Default".

- 1.3 Plan-It's liability to the Customer for death or injury resulting from its own or its employees' negligence shall not be limited.

- 1.4 Notwithstanding anything else in these Conditions Plan-It's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:

1.4.1 £[1,000,000] in the case of damage to the tangible property of the Customer resulting from the negligence of Plan-It or its employees; and

1.4.2 in the case of any other Event of Default 125% of the price of the goods and/or the then annual value of the fees for the provision of the services to which the Event of Default relates.

- 1.5 Subject to Condition 1.3, Plan-It shall not be liable to the Customer in respect of any Event of Default for indirect loss of profits, loss of data, goodwill or any type of special, indirect or consequential loss, even if such loss was reasonably foreseeable or Plan-It had been advised of the possibility of the Customer incurring the same.

- 1.6 If a number of Events of Default give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under the Contract.

- 1.7 The Customer hereby agrees to afford Plan-It not less than 40 days in which to remedy any Event of Default hereunder.

- 1.8 Except in the case of an Event of Default arising under Condition 1.3 Plan-It shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon Plan-It within two years of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.

- 1.9 Plan-It shall be under no liability in respect of any defect in the Goods arising after delivery to the Customer from wilful damage, negligence, abnormal working conditions, failure to follow Plan-It's or manufacturer's instructions (whether oral or in writing), misuse or alteration, or repair of the Goods without Plan-It's approval.

- 1.10 Nothing in this Condition 1 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

2. Confidentiality and Non-Solicitation

- 2.1 The Customer shall:

- 2.1.1 keep confidential all information (written or oral) concerning the business and affairs of Plan-It that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of the Contract including without limitation all information contained or embodied in the Bespoke Software Materials and in all other specifications and documentation relating to the Bespoke Software Materials and all information conveyed to the Customer by training (the "Information"); and
- 2.1.2 not without Plan-It's written consent disclose the Information in whole or in part to any other person.
- 2.2 The provisions of Condition 2.1 shall not apply to the whole or any part of the Information to the extent that it is trivial or obvious, already in the Customer's possession other than as a result of a breach of this Condition 2 or in the public domain other than as a result of a breach of this Condition 2.
- 2.3 The Customer shall make all relevant employees, agents and sub-contractors aware of the confidentiality of the Information and the provisions of this Condition 2 and without prejudice to the generality of the foregoing to take all such steps as shall from time to time be reasonably necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this Condition 2.
- 2.4 The Customer hereby undertakes to Plan-It that during the currency of the Contract and for the period of six months following its termination or expiry it will not directly or by its agent or otherwise and whether for itself or for the benefit of any other person induce or endeavour to induce any officer or employee of Plan-It who has been involved in the supply of the Goods or the provision of any services to the Customer to leave his employment.
- 2.5 In the event that the Customer breaches the provisions of Condition 2.4, the Customer shall pay to Plan-It by way of liquidated damages 35% of the annual salary, fee or other payment paid to any such officer or employee of Plan-It who has ceased to work for Plan-It as a result of the solicitation or otherwise of the Customer. The Customer agrees that the provisions of this Condition 2.5 are without prejudice to the other rights and remedies that Plan-It may have for such breach and that this is a reasonable estimate of the damages which would be suffered by Plan-It if such a breach were to occur.
- 2.6 The provisions of this Condition 2 shall remain in full force and effect notwithstanding any termination of the Contract.

3. Assignment and Third Party Rights

- 3.1 The Customer shall not be entitled to assign or otherwise transfer the Contract nor any of its rights or obligations under the Contract or hold the benefit of the Contract in trust for any other person without the prior written consent of Plan-It.
- 3.2 Plan-It shall be entitled to sub-contract or delegate the whole or any part of its obligations under the Contract.
- 3.3 Notwithstanding anything to the contrary contained in these Conditions, it is the intention of the parties that nothing in these Conditions shall confer on any third parties any rights or benefits under the Contract.

4. Prices and Payment

- 4.1 The price of the Goods, the Support Fees, Maintenance Fees, Additional Charges, Development Charge and any other fees specified in the Particulars or otherwise charged under the Contract are exclusive of any applicable VAT or other sales tax, which the Customer shall be additionally liable to pay to Plan-It.
- 4.2 All fees payable by the Customer to Plan-It under the Contract must be paid in full in pounds sterling without set-off, deduction or any other form of withholding unless otherwise required by law.
- 4.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Plan-It, Plan-It shall be entitled to charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above the Bank of England base rate from time to time in force, until payment in full is made, compounded monthly with a part of a month being treated as a full month for the purpose of calculating interest.

5. Term and Termination

- 5.1 The Contract shall, subject as provided in these Conditions, come into force on the Commencement Date and continue until either party gives the other party at least three months' prior written notice prior to terminate the Contract (the Contract terminating on expiry of such notice).
- 5.2 The Contract may be terminated forthwith at any time by Plan-It giving written notice to the Customer if:
- 5.2.1 the Customer fails to pay any sum due to Plan-It within 7 days of the due date for payment;
 - 5.2.2 the Customer shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors generally or if the Customer shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, administrator, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of a solvent amalgamation or reconstruction);
 - 5.2.3 if the Customer sells or disposes of in any way the whole or any substantial part of its business by one or a series of transactions;
 - 5.2.4 at any time control (as defined in section 840 of the Income and Corporation Taxes Act 1988) of the Customer is acquired by any person or group of connected persons (as defined in section 839 of that Act) not having control of the Customer at the date of the Contract, in which case the Customer shall forthwith give written notice to Plan-It identifying that person or group of connected persons; or
 - 5.2.5 the Customer commits any material breach of any of these Conditions and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same.
- 5.3 Any termination of the Contract pursuant to this Condition 5 shall be without prejudice to any other rights or remedies either party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

6. General

- 6.1 Plan-It shall not be liable for any breach of its obligations under the Contract resulting from an Event of Force Majeure.
- 6.2 Time shall not be of the essence and Plan-It shall incur no liability to the Customer in respect of any failure only to deliver the Goods or to complete the installation of the Goods, the provision of the Support or Maintenance or the provision of any other services by any due date for delivery agreed between the parties.
- 6.3 The waiver by either party of a breach or default of any of the provisions of these Conditions by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have under the Contract operate as a waiver of any breach or default by the other party.
- 6.4 Any notice request instruction or other document to be given under the Contract shall be delivered or sent by first class post to the address of the other party set out in the Contract Details (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery and (if sent by post) upon the expiration of 48 hours after posting.
- 6.5 If any provision of these Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of these Conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 6.6 These Conditions and the Contract Details together represent the entire understanding between the parties in

relation to the subject matter of the Contract and supersede all agreements made by either party whether oral or written. The Customer acknowledges that it has not entered into the Contract in reliance any representation not contained in these Conditions and acknowledges that its only remedies against Plan-It are for breach of contract. Nothing in this Condition 6.6 shall exclude or limit Plan-It's liability to the Customer in respect of any fraudulent misrepresentation or warranty fraudulently given and upon which the Customer can prove it has placed reliance.

- 6.7 No variation to these Conditions shall be effective unless in writing signed by a partner or authorised officer of Plan-It.
- 6.8 In addition to the rights and remedies contained in these Conditions, Plan-It shall have all the rights and remedies afforded to a seller pursuant to any rule of law. All rights and remedies of Plan-It under these Conditions shall be cumulative and not in the alternative.
- 6.9 The Contract shall be binding upon and enure for the benefit of the successors in title of the parties hereto.
- 6.10 These Conditions shall be governed by and construed in accordance with English law and the Courts of England and Wales shall have exclusive jurisdiction.

7. Definitions

- 7.1 In these Conditions unless the context otherwise requires the following expressions shall have the following meanings:

"Actual Delivery Date"	the actual date that the Bespoke Software Materials are delivered [and installed] by Plan-It in accordance with Part C Condition 3;
"Additional Charges"	the charges payable by the Customer to Plan-It at Plan-It's standard prevailing rates from time to time for work undertaken on a time and materials basis together with all expenses incurred;
"Bespoke Software"	the software (if specified in the Contract Details) to be designed and written by Plan-It pursuant to these Conditions;
"Bespoke Software Documentation"	the instruction manual, user guides and other documentation (if any) in respect of the Bespoke Software;
"Bespoke Software Inadequacy"	a failure by the Bespoke Software to perform in accordance with the Specification;
"Bespoke Software Materials"	the Bespoke Software and Bespoke Software Documentation (if any);
"CDPA"	the Copyright Designs and Patents Act 1988;
"Commencement Date"	the date on which the Contract is to come into force, as specified in the Contract Details;
"Conditions"	these Terms and Conditions, or any of them;
"Contract"	the contract for the supply of Goods, the installation of the Goods, the provision of the Maintenance, Support, Development Work and/or the provision of any other services (as applicable);
"Contract Details"	the specific contract details agreed between Plan-It and the Customer from time to time, as set out in the Contract Details form attached to these Conditions or otherwise agreed;
"Customer"	any customer purchasing goods and/or services from Plan-It;
"the Development Charge"	the fixed charge to be levied by Plan-It in respect of the Development Work in accordance with Part C Condition 4;
"Development Work"	the bespoke software development work as described in the

	Contract Details to be undertaken by Plan-It pursuant to these Conditions;
"Event of Force Majeure"	causes beyond the reasonable control of Plan-It including but not limited to fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority;
"Goods"	the goods to be supplied by Plan-It to the Customer as set out in the Contract Details;
"Intellectual Property Rights"	any and all copyrights, moral rights, related rights, patents, supplementary protection certificates, petty patents, utility models, trade marks, trade names, service marks, design rights, database rights, semi conductor topography rights, domain name rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not), and other similar intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world;
"Licence"	the licence for the Customer to use the Software granted pursuant to Part C Condition 5;
"Maintenance"	the services set out in Part B Condition 3;
"Maintenance Fees"	the fees payable for the Maintenance in accordance with and as varied in accordance with Part B Condition 5;
"Plan-It"	Plan-It Business Systems (a firm) of 1 st Floor, The Radcliffe Centre, 41 Blackburn Street, Manchester M26 1NR;
"Permitted Use"	the use of the Bespoke Software at the Site for the Customer's own business purposes in the ordinary course of its business;
"Site"	the address specified as such in the Contract Details;
"Software"	the software in respect of which Plan-It will provide the Support and (if applicable) Maintenance, as specified in the Contract Details;
"Specification"	the written specification of the Bespoke Software [as the same may be altered from time to time pursuant to Part C Condition 2 and any related documents such as notes of meetings];
"Support"	the services described in Part B Condition 2;
"Support Fees"	the fees payable for the Support in accordance with and as varied in accordance with Part B Condition 5;
"VAT"	value added tax as defined by and payable in accordance with the Value Added Taxes Act 1994;
"Warranty Period"	three calendar months from the Actual Delivery Date;
"Working Day"	Monday to Friday, excluding public holidays in England;
"Working Hours"	the hours 9.00 am to 5.00 pm on any Working Day.

- 7.2 Reference to a statute or statutory provision includes a reference to it as from time to time amended, extended or re-enacted.
- 7.3 Words denoting the singular number only include the plural and vice versa.
- 7.4 Unless the context otherwise requires, reference to a Condition is a reference to one of these Conditions. In any Part of these Conditions, a reference to a Condition number shall be to the Condition with that number in that Part. If there is any conflict between these Conditions and the Contract Details, the Contract Details shall prevail.
- 7.5 The headings in these Conditions are inserted for convenience only and do not affect their construction.
- 7.6 Any reference to any of the parties hereunder includes their successors in title and assigns.
- 7.7 Where the Customer is more than one person their liability under the Contract shall be joint and several.