

## First Stop I.T. Limited – Terms and Conditions

These terms and conditions (**Terms and Conditions**) govern our supply of services and sale of goods (together the **Services**) that we may provide to you from time to time.

These Terms and Conditions are divided into four sections as follows:

Section 1 relates to Support Contracts,  
Section 2 relates to our supply of services,  
Section 3 relates to our supply of goods, and  
Section 4 relates to general terms which shall apply in all circumstances.

Where you purchase our Services the details of the Services purchased will be contained in the Sales Order, and in the case of the purchase of a Support Contract, the Service Schedule to the Sales Order.

In the Terms and Conditions "we", "our" and "Provider" refers to First Stop I.T. Limited a limited liability company registered in England and Wales with registered number 03907462 and registered office address at Suite 9, 11 West Road, Harlow, CM20 2BU, and "you", "your" and "Customer" refers to the person firm or entity who or on whose behalf a Sales Order is acknowledged or signed.

### Section 1 – Support Contracts

#### **1. Type of Support Contracts**

1.1. We provide our IT support services on an annual contract basis, known as "Annual Unlimited" and "Annual Fixed-Hour", and on an as required basis known as "Hourly Pre-Purchase" or "Hourly PAYG".

1.2. Subject to these Terms and Conditions (as may be varied in the Service Schedule), Excluded Events and Force Majeure Events:

**Annual Unlimited:** provides the Annual Unlimited Contract Services plus an unlimited amount of remote and on-site support relating to the Supported System at the Supported Location during the Support Hours and Support Period at the Response Time.

**Annual Fixed-Hour:** provides the Annual Unlimited Contract Services plus up to the number of hours stated in the Service Schedule of remote and on-site support relating to the Supported System at the Supported Location during the Support Hours and Support Period at the Response Time.

**Hourly Pre-Purchase:** provides remote and on-site support up to the number of hours you purchase as stated in the Service Schedule relating to the Supported System during the Support Hours and Support Period at the Response Time. Hourly Pre-Purchase does not include any Annual Contract Services.

**Hourly PAYG:** provides such Services solely as stated in the Sales Order. Hourly PAYG does not include any Annual Contract Services and is not a Support Contract.

#### **2. Service Credits**

2.1. If we fail to respond to a support request within the relevant Response Time as provided in the Service Schedule, then you shall be entitled to the relevant service credit as provided in the Service Schedule, provided that the fault or other problem with the Supported System did not result from an Excluded Event or Force Majeure Event, and in the case of a system fault, the problem was promptly notified to us in accordance with clause 6.1.3. The provision of a service credit shall be the exclusive remedy for a failure by us to meet the Response Times set out in the Service Schedule. Service credits shall be shown as a deduction from the amount due from you to us in the next invoice then to be issued by us. We shall not be obliged to pay any money or make any refund to you.

### **3. Duration of IT Support Contracts**

3.1. Our Annual Support Contracts shall commence on the Contract Commencement Date. Unless terminated earlier in accordance with this clause 3.1 or clause 19, the Annual Support Contracts shall continue for the Initial Contract Period and shall automatically extend for a Renewal Period at the end of the Initial Contract Period and at the end of each Renewal Period. Either of us may give written notice to the other, not later than 60 days before the end of the Initial Contract Period or the relevant Renewal Period, to terminate an Annual Support Contract at the end of the Initial Contract Period or the relevant Renewal Period, as the case may be.

3.2. Our obligation to provide support under the Hourly Pre-Purchase shall commence on the Contract Commencement Date, and unless terminated earlier in accordance with clause 19 our obligations to provide our support under the Hourly Pre-Purchase shall terminate 12 months after the Contract Commencement Date. Hours purchased (or any part of an hour) which are unused under Hourly Pre-Purchase shall not carry over to any other service plan offered by us and shall be immediately forfeit at the end of the Support Period of the Hourly Pre-Purchase as provided by this clause 3.2.

3.3. If at any time during the Initial Contract Period or a Renewal Period as the case may be, you elect to terminate an Annual Support Contract, or otherwise you conduct yourself in circumstances entitling us to terminate under clause 19, then without prejudice to our other rights under these Terms and Conditions we are entitled to be fairly compensated by the amount equal to the full amount of our fees and other charges that would have been paid to us during the whole of the term of the Initial Contract Period or Renewal Period as the case may be, if the relevant Annual Support Contract had not been terminated before the period provided by clause 3.1. Such fees and other charges shall become immediately due and payable to us on the date of such termination.

## Section 2 – Supply of Services

### **4. Support Desk Contact, Resolution and Escalation**

4.1. You may request support by contacting our support desk by telephone on 0845 458 0553, by email at [support@firststopit.co.uk](mailto:support@firststopit.co.uk) or by logging a ticket on our support tracking system at <http://www.firststopit.co.uk/client-home>. All requests for support should provide a description of the issue, the user's name, PC number, contact telephone number and the start time of the incident.

4.2. As soon as reasonably practicable from when we have logged a support request on our support tracking system will shall provide you with an acknowledge receipt and service log number. Each support request we receive from you shall incur a standard minimum time allowance of 5 minutes.

4.3. Our Response Times shall commence from when we log the receipt of a support request in our support tracking system. We shall use reasonable endeavours to respond to all support requests within the Response Times.

4.4. One of our help desk technicians will respond to a support request by email or telephone. We shall prioritise support requests based on our assessment of the seriousness of the matter. Prior to such assessment all support requests shall by default be deemed as non-critical.

4.5. Following our assessment of the seriousness of the support request we shall endeavour to provide a fix to the issue in all material respects. As appropriate we may provide a temporary emergency fix or workaround solution pending being able to provide a more permanent fix. We shall retain discretion in how we determine any system faults should be fixed.

4.6. In respect of Support Contracts if our help desk technicians are unable to resolve a system fault remotely then we may at our discretion send an engineer to the Support Location. As applicable our engineer will replace any parts or components of the Supported System in order to fix the issue. We shall have the right to charge the you for the spare parts. All parts and components removed from the Supported System by us in the course of providing our support shall no longer constitute part of the Supported System.

4.7. Where permitted by the applicable software licence agreement, we may use new versions or releases, patches and other updates of third party software to repair known problems to applicable system faults.

4.8. We are not obliged to provide support if we determine, acting reasonably, that any issue with the Supported System is due to an Excluded Event.

4.9. We may charge an Additional Service Fee in any of the following circumstances:

- 4.9.1. if we provide Additional Services,
- 4.9.2. if we are performing or have performed support in circumstances where it is established that the Supported System was not in good working order due to an Excluded Event;
- 4.9.3. if we provide the support outside Support Period or Support Location.

4.10. In respect of all Support Contracts, if in our reasonable opinion, we determine that you are abusing the use of our Services, such as making excessive service requests due to your employees improperly or negligently using the Supported System, we may ask you to moderate your behaviour and provide some reasonable guidelines. In an extreme case we reserve the right to limit the number of service requests you may make relating to a particular issue or generally, switch the type of Support Contract we are providing to you, or cease to provide any further support services.

4.11. Site visits to the Support Location or any other location shall be in our sole discretion.

### **5. Our Obligations**

- 5.1. We shall provide our Services using reasonable care and skill.
- 5.2. We shall use reasonable endeavours to meet any Response Times and any other agreed performance dates between us, but any such dates shall be estimates only and time shall not be of the essence relating to them.

#### *Information security consultancy services*

- 5.3. Where our services include the provision of any information security consultancy services then you acknowledge that we are not providing legal advice on any such matters, in particular the interpretation and application of the Data Protection Legislation.
- 5.4. Our information security consultancy services may comprise a number of services such as strategy, security architecture implementation, risk analysis and training. In each case we will only provide such service if expressly mentioned in an applicable Service Schedule. However, whilst we shall provide reasonable care and skill in the provision of such services, our services are not a guarantee that you will not suffer a security breach. For example using anti-virus software is not a guarantee you will not get a virus. Adopting a password policy is not a guarantee passwords will not get compromised. Using a firewall is not a guarantee you will not be hacked. Accordingly, and in accordance with clause 18.4.1 we do not accept liability for losses you may suffer or incur relating to any such security breaches and we cannot accept responsibility for failures or errors in third party software.

## **6. Your Obligations**

- 6.1. You shall:
  - 6.1.1. at all reasonable times provide us all reasonable information, assistance and remote access to the Supported System as are necessary to assist us in providing support;
  - 6.1.2. at all reasonable times permit full and free access to the Support Location and to the Supported System to us, our employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable us to provide support while at the Support Location;
  - 6.1.3. notify us promptly if the Supported System is discovered to be operating incorrectly;
  - 6.1.4. ensure that the Supported System is installed and kept in suitable premises and under suitable conditions, permit only trained and competent personnel to use it and follow any operating instructions as we may give from time to time;
  - 6.1.5. not allow any person other than us to maintain, alter, modify or adjust the Supported System without our prior written approval;
  - 6.1.6. not move the Supported System from the Support Location without our prior written approval (approval not to be unreasonably withheld or delayed);
  - 6.1.7. store any reserve equipment only in conditions approved by us, and make this equipment available for periodic maintenance, as with all other parts of the Supported System;
  - 6.1.8. only use supplies or materials supplied or approved by us (approval not to be unreasonably withheld or delayed);
  - 6.1.9. provide to us at least 14 days written notice if you intend to make any changes to any services provided to the Supported System by any third party and you shall not make any such changes without our prior written consent (such consent not to be unreasonably withheld or delayed). For example, if you intend to change your internet service provider then we will require appropriate information in order to approve and understand any impact to the provision of our Services; and
  - 6.1.10. ensure we are kept aware at all times of all hardware and software comprising the Supported System. Unless specifically provided in a Service Schedule we cannot guarantee that any change we make to the Supported System whether software or hardware related will be compatible with the Supported System prior to any such change. Further, if we are unaware of

any hardware or software comprising the Supported System then will not be responsible for any compatibility issues that may subsequently arise. Any assistance we provide relating to compatibility issues shall be deemed as Additional Services.

### Section 3 – Supply of Goods

On each occasion that we supply goods whether or not as part of a Support Contract, the terms and conditions in this section 3 and section 4 shall apply.

#### **7. Goods Contract**

7.1. The Sales Order for goods by you shall be deemed to be an offer by you subject to these Terms and Conditions. You shall ensure that the Sales Order is complete and accurate.

7.2. A binding Goods Contract shall not come into existence between us unless and until we issue a written order acknowledgement to you, or we deliver the goods to you (whichever occurs earlier).

7.3. We may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Goods Contract. Each instalment shall be a separate Goods Contract and no cancellation or termination by either party of any one Goods Contract relating to an instalment shall entitle you to repudiate or cancel any other Goods Contract or instalment.

7.4. No order which has been acknowledged by us may be cancelled by you, except with our written permission and provided that you indemnify us in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

#### **8. Quantity and description**

8.1. The quantity and description of the goods shall be as set out in the Sales Order.

8.2. All samples, drawings, descriptive matter, specifications and advertising issued by us, and any descriptions or illustrations contained in our websites, catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Goods Contract.

8.3. Any typographical, clerical or other error or omission in any sales literature, website, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on the part of us.

8.4. We reserve the right (but do not assume the obligation) to make any changes in the specification of the goods which are required to conform with any applicable legislation or, where the goods are to be supplied to your specification, which do not materially affect their quality or performance. Where we are not the manufacturer of the goods, we shall use reasonable endeavours to transfer to you the benefit of any warranty or guarantee given by the manufacturer to us.

8.5. Our employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the goods.

#### **9. Delivery of goods and acceptance**

9.1. We shall use reasonable endeavours to deliver the goods on the date or dates specified in our acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of goods and we are not in any circumstances liable for any delay in delivery, however caused.

9.2. The goods may be delivered by us in advance of the quoted delivery date on giving reasonable notice to you.

9.3. Delivery shall be made during normal business hours (excluding bank or public holidays). We may levy additional charges for any deliveries made outside such hours at your request.

9.4. You shall be responsible (at your cost) for preparing the delivery location for the delivery of the goods and for the provision of all necessary access and facilities reasonably required to deliver and, if applicable, install the goods. If we are prevented from carrying out delivery or, if applicable, installation on the specified date because no such preparation has been carried out, we may levy additional charges to recover its loss arising from this event.

9.5. You shall be deemed to have accepted the goods when you have had 7 days to inspect them after delivery and have not exercised in writing your right of rejection in accordance with clause 11.1

9.6. We shall not be responsible for any damage or loss in transit to goods.

## **10. Risk and property**

10.1. The goods shall be at our risk until delivery to you at the place of delivery specified in our acknowledgement of order.

10.2. Ownership of the goods shall pass to you on the later of completion of delivery (including without limitation off-loading), or when we have received in full in cleared funds all sums due to us in respect of:

10.2.1. the goods; and

10.2.2. all other sums which are or which become due to us from you on any account.

10.3. Until ownership of the goods have passed to you under clause 10.2, you shall:

10.3.1. hold the goods on a fiduciary basis as our bailee;

10.3.2. store the goods (at no cost to us) in satisfactory condition and separately from all your other equipment or that of a third party, so that it remains readily identifiable as our property;

10.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the goods; and

10.3.4. keep the goods insured on our behalf for their full price against all risks with a reputable insurer and hold the proceeds of such insurance on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

10.4. Your right to possession of the goods before ownership has passed to you shall terminate immediately if any of the circumstances set out in clause 19 arise or if you encumber or in any way charge the goods, or if you fail to make any payment to us on the relevant due date.

10.5. You grant to us, our agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or where your right to possession has terminated, to remove them. All costs incurred by us in repossessing the goods shall be borne by you.

10.6. On termination of any Goods Contract for any reason, our rights in this clause 10 shall remain in effect.

## **11. Warranty**

11.1. We warrant to you that the goods are free from defects of workmanship and materials. We undertake (subject to the remainder of this clause 11), at our option, to repair or replace goods (other than consumable items) which are found to be defective as a result of faulty materials or workmanship within six months of delivery and installation.

11.2. We shall not in any circumstances be liable for a breach of the warranty contained in clause 11.1 unless:

11.2.1. you give written notice of the defect to us within seven days of the time when you discover or ought to have discovered the defect; and

11.2.2. after receiving the notice, we are given a reasonable opportunity of examining such goods and you (if asked to do so by us) return such goods to our place of business at your cost for the examination to take place there.

11.2.3. We shall not in any circumstances be liable for a breach of the warranty in clause 11.2 if:

(a) you make any use of the goods in respect of which you have given written notice under condition 11.2.1; or

(b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods or (if there are none) good trade practice; or

(c) you alter or repair the relevant goods without our written consent.

11.2.4. Any repaired or replacement goods shall be under warranty for the unexpired portion of the six-month period.

11.2.5. We shall not in any circumstances be liable for any damage or defect to the goods caused by improper use of the goods or use outside their normal application.

## **12. Remedies**

12.1. Any liability of us for non-delivery of the goods shall in all circumstances be limited to replacing the goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such goods.

12.2. In the event of any claim by you under the warranty given in condition 11.1, you shall notify us in writing of the alleged defect. We shall have the option of testing or inspecting the goods at their current location or moving them to our premises (or those of our agents or sub-contractors) at our cost. If your claim is subsequently found by us to be outside the scope or duration of the warranty in clause 11, the costs of transportation of the goods, investigation and repair shall be borne by you.

## Section 4 – General

### **13. Application of these Terms and Conditions**

13.1. These Terms and Conditions shall:

13.1.1. apply to and be incorporated in all Support Contracts, Goods Contracts and, unless otherwise provided in writing, any other contracts we enter into with you relating to the provision of our Services; and

13.1.2. prevail over any inconsistent terms or conditions contained in, or referred to in, your purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

13.2. No addition to, variation of, exclusion or attempted exclusion of any term of a Support Contract, Goods Contract any other contracts we enter into with you relating to the provision of our Services shall be binding on us unless in writing and signed by one of our duly authorised representatives.

13.3. If you provide to us a purchase order, then in accordance with these Terms and Conditions, it shall be deemed to be an offer by you to purchase our services or goods specified in it subject to these Terms and Conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by you, or our commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those services or goods subject to these Terms and Conditions. Your standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern a Support Contract, Goods Contract or any other services we may provide to you.

### **14. Prices**

14.1. All prices shall be as stated in the Sales Order. All prices are exclusive of delivery, packaging, packing, shipping, carriage and insurance. Quotations are valid for 7 days from the date stated upon them, and we may withdraw a quotation at any time.

14.2. In respect of Annual Support Contracts we reserve the right to revise our charges:

14.2.1. in the event of any changes to the Supported System or Support Location. If the Supported System reduces in size over the Initial Contract Period or any Renewal Period, the maximum amount we will reduce our support charges during the remainder of the Initial Contract Period or any Renewal Period, as applicable, will be by 10%, such reduction to apply from the month following our notification of the relevant change; and

14.2.2. at any time on 30 days prior written notice after the Initial Contract Period or any Renewal Period as applicable. However, if any increase under this sub-clause 14.2.2 is more than the increase in the Retail Price Index over the preceding twelve months or 5%, whichever is the greater, then you may terminate the relevant Annual Support Contract effective on the date that our new charges apply.

14.3. Where we are providing our Services on a time-and-materials basis:

14.3.1. the charges payable for the services shall be calculated in accordance with our standard daily fee rates as amended from time to time;

14.3.2. our standard daily fee rates are calculated on the basis of a seven-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and bank and public holidays); and

14.3.3. we shall be entitled to charge at an overtime rate of 1.5 times the normal rate for time worked by members of our support project team outside the hours referred to in clause 14.3.2.

14.4. All prices quoted (and unless expressly provided in a Sales Order) are exclusive of:

- 14.4.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by us in connection with the relevant services, and the cost of any materials or services reasonably and properly provided by third parties required by us for the supply of the services. Such expenses, materials and third party services shall be invoiced by us to you; and
- 14.4.2. VAT, which we shall add to our invoices at the appropriate rate.

## **15. Payment**

- 15.1. In respect of our Annual Support Contracts our charges shall be due and payable to us monthly in advance and within 30 days of our issue of an invoice. We shall invoice you 1 month prior to the start of each month during the term of an Annual Support Contract as applicable.
- 15.2. In respect of our Hourly Pre-Purchase contracts our charges shall be due and payable to us in full in advance of any work being commenced.
- 15.3. In respect of any Additional Services or for the sale of goods our charges will either be payable fully in advance if provided on the relevant Sales Order, or if we agree, payable 30 days from the date of the relevant Sales Order (and in the case of goods whether or not delivery has taken place or title in the goods has passed to you).
- 15.4. You shall pay each invoice submitted to you in full, and in cleared funds.
- 15.5. Without prejudice to any other right or remedy that we may have, if you fail to pay us in full on the due date we may:
  - 15.5.1. charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment;
  - 15.5.2. suspend all services under a Support Contract (or delivery under a Goods Contract) until payment has been made in full; or
  - 15.5.3. terminate the relevant contract (including any Annual Support Contract or Hourly Pre-Purchase).
- 15.6. Time for payment shall be of the essence of all contracts.
- 15.7. We may, without prejudice to any other rights we may have, set off any liability you have to us against any liability we may have to you.
- 15.8. Without prejudice to any other rights we may have under these Terms and Conditions, on termination of a Support Contract, any other sum due to us from you, under any other contract between us, shall become immediately due and payable.

## **16. Our employees and sub-contractors**

- 16.1. You shall not, without our prior written consent, at any time during the period of a Support Contract and for twelve months after a Support Contract terminates or for twelve months after completion of any other services we provide to you, solicit or entice away from us or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of us.
- 16.2. Any consent given by us in accordance with condition 16.1 shall be subject to you paying to us a sum equivalent to 20% of the then current annual remuneration of our employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by you to such employee or sub-contractor.

## **17. Intellectual Property Rights and Confidentiality**

- 17.1. We shall retain the property and copyright in all documents supplied to you in connection with any services provided to you and it shall be a condition of such supply that the

contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without our prior written consent.

17.2. In relation to any software applications proprietary to third parties that we supply or introduce to you:

17.2.1. you acknowledge that you are buying only the media on which the software is recorded and the accompanying user manuals;

17.2.2. nothing contained in these conditions shall be construed as an assignment of any intellectual property rights in such software or user manuals; and

17.2.3. you shall be subject to the rights and restrictions imposed by the owner of the intellectual property rights in the software and user manuals, and shall comply with all licence terms of use and registration requirements relating to them.

17.3. Each party shall at all times keep confidential (and to procure that its employees and agents shall keep confidential) any confidential information which it or they may acquire in relation to the business and affairs of the other party and shall not use or disclose such information except with the consent of that other party or in accordance with the order of a court of competent jurisdiction.

17.4. The obligations of each us contained in clause 17.3 shall continue without limit in point of time but shall cease to apply to any information coming into the public domain otherwise than by breach by any such party of its obligations contained in clause 17.3 provided that nothing contained in clause 17.3 shall prevent any party from disclosing any such information to the extent required in or in connection with legal proceedings arising.

17.5. You agree with us not to cause or permit anything to be done which may damage or endanger our intellectual property or any title to such intellectual property or assist or allow others to do so.

## **18. Limitation of liability**

18.1. The following provisions sets out our entire financial liability (including without limitation any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

18.1.1. any breach of a Support Contract or Goods Contract howsoever arising;

18.1.2. any use made by you of our Services or any part of them; and

18.1.3. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with any Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services.

18.2. Nothing in these conditions excludes our liability:

18.2.1. for death or personal injury caused by our negligence; or

18.2.2. for fraud or fraudulent misrepresentation.

18.3. Subject to clause 18.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from all Support Contracts, Goods Contract or any other agreement between us relating to the provision of our Services.

18.4. Subject to clause 18.2 and clause 18.3:

18.4.1. we shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

(a) loss of profits; or

(b) loss of business; or

(c) depletion of goodwill or similar losses; or

- (d) loss of anticipated savings; or
- (e) loss of goods; or
- (f) loss of use; or
- (g) loss or corruption of data or information; or
- (h) any special, indirect, consequential or pure economic loss or damage;

and for the avoidance of doubt, the losses excluded shall include any losses arising from :

- (i) unavailability, down-time, failure or other act or omission of any third party telecommunications or cloud service provider;
- (ii) relating to the loss or corruption of data;
- (iii) relating to an Excluded Event; and
- (iv) relating to Force Majeure as provided by clause 21.

18.4.2. our total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services shall be limited as follows:

- (a) in respect of any liability arising under and in respect of an Annual Support Contract, the amount of all fees paid by you to us during the current 12 month term of the relevant Annual Support Contract (such term being either the Initial Contract Period or a Renewal Period) that such liability arises;
- (b) in respect of liability arising under and in respect of Hourly Pre-Purchase the amount of all fees paid by you to us during the 12 month term of the Hourly Pre-Purchase such term as provided by clause 3.2, that such liability arises;
- (c) in respect of liability arising under and in respect of Hourly PAYG the amount of the fees paid by you to us under the Hourly PAYG that such liability arises;
- (d) where we supply goods or other projects during the period of any Annual Support Contract or Hourly PAYG then the fees payable under such supplies shall be excluded from the limitation amounts as provided in 18.4.2 (a) to (c). However any liability under such supplies shall be limited to the relevant fees paid by you to us in respect of such supplies where the liability arises.

## 19. Termination

19.1. Without prejudice to any other rights or remedies to which we may be entitled, we may terminate a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services without liability to the other if:

19.1.1. you fail to pay any amount due to us on the relevant due date for payment and such amount remaining in default not less than seven days after you have been notified in writing to make such payment;

19.1.2. you commit a material breach of any of the terms under these Terms and Conditions which breach is irremediable or (if such breach is remediable) fail to remedy that breach within a period of 14 days after being notified in writing to do so;

19.1.3. you suspend, or threaten to suspend, payment of your debts or you are unable to pay your debts as they fall due or you admit inability to pay your debts or you are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986;

19.1.4. you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or you make a proposal for or enter into any compromise or arrangement with your creditors other than for the sole purpose of a scheme for a solvent amalgamation;

19.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up other than for the sole purpose of a scheme for a solvent amalgamation;

19.1.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over you;

19.1.7. the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;

19.1.8. a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;

19.1.9. a creditor or encumbrancer of yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days; or

19.1.10. you have a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).

19.2. Any provision of these Terms and Conditions that expressly or by implication is intended to continue in force on or after termination or expiry of a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services shall remain in full force and effect.

19.3. Termination of a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services shall not affect any rights, remedies, obligations or liabilities between us that have accrued up to the date of termination, including the right to claim damages in respect of any breach of a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services which existed at or before the date of termination.

19.4. On termination of an Annual Support Contract we shall only provide any required handover assistance to another party subject to your having paid in full all and any outstanding charges and fees due to us, including where applicable, any amount payable under clause 3.3. Furthermore, any such handover services shall be provided at your cost and expense, and we may ask for payment on account before commencing such services.

## **20. Data Protection**

20.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 20, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

20.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Provider is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

20.3. Without prejudice to the generality of clause 20.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.

20.4. Without prejudice to the generality of clause 20.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

20.4.1. process that Personal Data only on the written instructions of the Customer unless the Provider is required by Applicable Laws to otherwise process that Personal Data. Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before

performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer;

20.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

20.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

20.4.4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained or in relation to a transfer of any Personal Data to the US the third party processor receiving such Personal Data is certified to ISO27001 and registered as compliant to the EU-US Privacy Shield Framework;

20.4.5. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

20.4.6. notify the Customer without undue delay on becoming aware of a Personal Data breach;

20.4.7. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

20.4.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 20.

20.5. Either party may, at any time on not less than 30 days' notice, revise this clause 20 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

20.6. The Customer consents to the Provider appointing a third party processor of Personal Data under this agreement only where such third party is certified to ISO27001.

The Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.

## **21. Force majeure**

21.1. We shall not in any circumstances have any liability to you under a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services if we are prevented from, or delayed in, performing our obligations under a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental

order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

## **22. Waiver**

22.1. No failure or delay by us to exercise any right or remedy provided under a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **23. Rights and remedies**

23.1. The rights and remedies provided under these Terms and Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

## **24. Severance**

24.1. If any provision or part-provision of these Terms and Conditions are or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of any Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services.

24.2. If any provision or part-provision of a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services is invalid, illegal or unenforceable, you agree to negotiate with us in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **25. Entire agreement**

25.1. In respect of each Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services these Terms and Conditions together with the relevant accompanying Sales Order (and in respect of a Support Contract the accompanying Service Schedule):

25.1.1. constitute the entire agreement between us relating to such Support Contract, Goods Contract or such other agreement between us relating to the provision of our Services; and

25.1.2. supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to such Support Contract, Goods Contract or such other agreement between us relating to the provision of our Services.

25.2. You acknowledge that in entering into a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services that you do not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in such Support Contract, Goods Contract or such other agreement between us relating to the provision of our Services.

25.3. You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in a Support Contract, Goods Contract or such other agreement between us relating to the provision of our Services.

## **26. Assignment**

26.1. You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services.

26.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services.

## **27. No partnership or agency**

27.1. Nothing in these Terms and Conditions is intended to or shall operate to create a partnership between us, or to authorise either of us to act as agent for the other, and neither of us shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **28. Third party rights**

28.1. No one other than a party to a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services, their successors and permitted assignees, shall have any right to enforce any of these terms of such Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services.

## **29. Notices**

29.1. Any notice or other communication given to a party under or in connection with these Terms and Conditions shall be in writing and shall be:

29.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office;

29.1.2. sent by fax to its main fax number; or

29.1.3. sent by email in our case to [solutions@firststopit.co.uk](mailto:solutions@firststopit.co.uk) or in your case the email address specified in the Service Schedule (if applicable) or used by us when emailing a Sales Order.

29.2. Any notice or communication shall be deemed to have been received:

29.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

29.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;

29.2.3. if sent by fax, at 9.00 am on the next Business Day after transmission; or

29.2.4. if sent by email, one hour after the transmission time of the email if sent between 9.00 am and 5.00 pm on a Business Day, or 9.00am on the next Business Day after the time of transmission of the email.

29.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **30. Transfer Regulations**

30.1. You agree that if there is a 'relevant transfer' for the purpose of the Transfer Regulations, the following provisions will apply (notwithstanding that neither of us intend for the Transfer Regulations to apply to any Support Contract or its termination or expiry or any other agreement or understanding between us):

30.1.1. if any employee or personnel of yours transfers or claims that their employment or engagement (or any related liability) transfers to us or any of our subcontractors under the Transfer Regulations or otherwise as a result of our providing the Services (**Customer Transfer Event**), unless we have agreed with you (such agreement to be in our sole and absolute discretion) how those employees or personnel and/or that liability should be dealt with, within 30 days after you have notified us in writing of the Customer Transfer Event, we may dismiss any such employee or personnel; and

30.1.2. you shall indemnify and keep us indemnified from all Employment Liabilities which we may incur as a result of the Transfer Regulations applying or being alleged to apply including any Employment Liabilities arising out of or in connection with any dismissal by us under clause 29.1.1.

### 31. Governing law and Jurisdiction

31.1. These Terms and Conditions and any disputes or claims arising out of or in connection with a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services or their subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

31.2. We both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services or their respective subject matter or formation (including non-contractual disputes or claims).

### 32. Interpretation

32.1. The following definitions and rules of interpretation apply in these Terms and Conditions

**Additional Services:** as applicable, any Services we provide relating to Excluded Events or services outside the scope of a Support Contract, Goods Contract or any other agreement between us relating to the provision of our Services (including for the avoidance of doubt any hand over support we provide to any IT support company you may appoint in succession to us).

**Additional Services Fees:** our fees for providing any Additional Services.

**Annual Contract Services:** Annual Unlimited Contract Services and Annual Fixed Hours Contract Services.

**Annual Fixed Hours Contract Services:** in respect of the Supported System, an initial site survey and software monitoring on a 24/7 basis. Proactive patching, maintenance services and network management services are provided based on the number of hours as stated in the Service Schedule. For the avoidance of doubt whether any such services are included or excluded as part of Annual Contract Services will be determined solely by reference to the applicable Service Schedule.

**Annual Support Contract:** our IT support services provided on an annual support contract basis known as Annual Unlimited and Annual Fixed Hours and as provided at clause 1.2.

**Annual Unlimited Contract Services:** in respect of the Supported System, an initial site survey; software monitoring on a 24/7 basis; proactive patching and maintenance services; and network management services, as specified in the service schedule. For the avoidance of doubt whether any such services are included or excluded as part of Annual Contract Services will be determined solely by reference to the applicable Service Schedule.

**Contract Commencement Date:** the date of the commencement of an Annual Support Contract and Hourly Pre-Purchase, such date as provided in the Service Schedule.

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

**Employment Liabilities:** means all claims, losses, costs, liabilities, demands, actions, fines, penalties, awards or expenses relating to the employment or engagement of a person (including decisions not to engage or dismissal), including for redundancy, discrimination, unfair, wrongful or constructive dismissal (including legal costs on an indemnity basis).

**Excluded Events:** means:

- (a) a defect in the manufacturer's design of the Supported System;
- (b) a part in the Support System becoming obsolete, too old or unserviceable in our reasonable opinion;
- (c) faulty materials or workmanship in the manufacture of the Supported System;
- (d) the use by you of any hardware or software not provided by us or approved by us for use by you in connection with the Supported System;
- (e) the use of a non-current version or release of software used in the Supported System;
- (f) any maintenance, alteration, modification or adjustment performed by persons other than us or our employees or agents unless approved by us in accordance with clause 6.1.5;
- (g) you or a third party moving the Supported System;
- (h) the use of the Supported System in breach of any of the provisions of the agreement under which the Supported System was supplied;
- (i) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Supported System;
- (j) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Supported System;
- (k) any improper use, misuse or unauthorised alteration of the Supported System by you;
- (l) failure to provision and maintain a backup of company data in line with our recommendations;
- (m) failure to provision and maintain a disaster recovery solution in line with our recommendations;
- (n) failure to provision and maintain security hardware and software in line with our recommendations;
- (o) failure to maintain a valid license for all hardware and software on the supported system;

- (p) failure to maintain vendor support for third party software where it is recommended by the vendor;
- (q) failure to maintain a valid manufacturer hardware warranty for all parts of the supported system; or
- (r) using or storing any part of the supported system outside of its recommended operating environment.

**Force Majeure Event:** an event outside of our control as provided by clause 20.

**Goods Contract:** a contract between us for the sale and purchase of the goods in accordance with these Terms and Conditions.

**Initial Contract Period:** a period of 12 months commencing on the Contract Commencement Date.

**Renewal Period:** each successive 12-month period after the Initial Contract Period for which an Annual Support Contract is renewed.

**Response Times:** in respect of a Support Contract the service response times referred to in the relevant table set out in the Service Schedule. For the avoidance of doubt Response Times in respect of Support Contracts applies relating to business critical support. The installation of new hardware or software shall be not deemed business critical unless such installation is in response to a business critical issue.

**Sales Order:** your order for our Services, as set out in your order form, or your written acceptance of our quotation, or your electronic approval of our electronic order delivery system currently QuoteValet, as the case may be.

**Service Schedule:** in respect of Support Contracts, the service schedule attached to the Sales Order confirming, amongst other things, the type of support contract we are providing to you and the relevant Response Times applicable to that support contract.

**Support Contract:** either an Annual Support Contract or Hourly Pre-Purchase.

**Support Hours:** 9am to 5pm Monday to Friday excluding bank and public holidays.

**Support Location:** in respect of Support Contracts the location of the Supported System as provided in the Service Schedule.

**Support Period:** the duration of a Support Contract as determined by clause 3.

**Supported System:** in respect of Support Contracts the number of active users and the number of servers and other equipment we have agreed to support at the Support Location as fully listed in the Service Schedule, and in respect of Hourly PAYG such users and equipment as we agree to support at the applicable time.

**Transfer Regulations:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 32.2. References to "you" shall also include your users of the Supported System.
- 32.3. Clause, Schedule and paragraph headings shall not affect the interpretation of these Terms and Conditions.

32.4. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

32.5. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

32.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

32.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

32.8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

32.9. A reference to **writing** or **written** includes faxes and e-mail.

32.10. References to clauses and Schedules are to the clauses and Schedules of this Terms and Conditions and references to paragraphs are to paragraphs of the relevant Schedule.