

These Terms and Conditions ('Conditions') constitute the only basis on which 1st Advance Limited agrees to supply the Equipment, Software, Consultancy and/or Services.

## 1 Definitions

1.1 In these Conditions the following terms have the following meanings:

**"Associated Companies"** means in relation to a party, the holding party or any majority owned subsidiary of such party or holding company;

**"Agreement"** means these Conditions, the Order Form and the 1st Advance Documentation that is expressly incorporated by reference by 1st Advance on the Order Form;

**"Charges"** means the price for the Equipment, annual Services/Consultancy or any other applicable Charges annual or otherwise as specified out in the Order Form, price list, quotation or other 1st Advance Documentation;

**"Commencement Date"** means the date as contained in the Order Form;

**"Consultancy"** means the general technical IT or Internet related consultancy services of 1<sup>st</sup> Advance including (but not limited to) installation and set-up consultancy in anticipation for the provision of the Services, project management, scoping provided for 8 hours during standard business hours 0900 and 1730 GMT;

**"Customer"** means the company and its Associated Companies or other legal entity accepting any 1st Advance Documentation, quotation, proposal or price list as detailed in the Order Form;

**"1st Advance"** means 1st Advance Limited of Albany House, 14 Shute End, Wokingham, Berkshire. RG40 1BJ or its duly appointed sub-contractors;

**"Equipment"** means the computer hardware which is to be supplied and as identified in the Order Form;

**"Initial Term"** means the period as indicated on the Order Form and shall commence after completion of all of the Consultancy and from the date of invoice of the Services in accordance with Clause 8.1 (d);

**"Order Form"** means the 1st Advance Order Form incorporating these Conditions and/or the Customer's purchase order which may be accepted by 1st Advance provided that these Conditions are automatically incorporated into such purchase order and subject always to clause 2.1;

**"Services"** means the 1st Advance fixed or packaged service 1st Advance shall deliver and are identified in detail in the relevant Service Description but excluding Third Party Contracted Services as set out in clause 9.1 (b);

**"Software"** means the software programs and each and every component thereof, including all non-chargeable developments, upgrades or releases thereof, whether existing now or becoming available in the future to be supplied and identified in the Order Form;

**"TPP"** means the Third Party Products of goods or services as provided by a third party under contract with 1st Advance.

## 2 Agreement

2.1 Notwithstanding a duly executed agreement to the contrary the parties contract on these Conditions which shall prevail over any inconsistent terms which Customer may seek to introduce on any purchase order or any other communication for the supply/purchase of Equipment, Software or Services. Such inconsistent terms shall have no effect on any supplies made by 1st Advance to the Customer.

2.2 1st Advance shall supply and Customer shall pay the Charges for Equipment, Software, Consultancy and/or Services as set out in the Order Form and on the terms and conditions of this Agreement.

## 3 Delivery

3.1 1st Advance shall use its reasonable endeavours to deliver or procure the delivery of the Equipment or Software to such location as stated in the Order Form on or before any specified date for delivery.

## 4 Title Risk and Ownership.

4.1 Risk in Equipment or Software (media) shall pass to Customer on delivery of Equipment or Software to Customer. Title in the Equipment (excluding any rights in Software) shall pass to the Customer on receipt by 1st Advance of full and cleared payment for the price of the Equipment.

4.2 In relation to any Software the copyright or other intellectual property rights therein shall remain vested in the owner thereof and Customer shall enter into with the software owner such end user licence agreement as may be prescribed by the software owner. Customer shall abide by the terms of and be responsible for any end user licence agreement with the software owner.

## 5 Warranties

5.1 1st Advance warrants it has the right to provide or procure the provision of Equipment or Software to Customer and that Customer shall have the right to use Equipment or Software.

5.2 The warranties and remedies given by 1st Advance to Customer in respect of Equipment or Software are those which are given by the manufacturer or owner (as the case may be) of such Equipment or Software (as the case may be) to 1st Advance (with all necessary changes) including without limitation in respect of Year 2000 compliance and are subject to any relevant limitations and exclusions imposed by such manufacturer or owner (as the case may be). 1<sup>st</sup> Advance shall provide Customer with details of such warranties and remedies for breach of such warranties (if applicable) upon request.

5.3 Customer's sole remedy for breach of any warranties in clause 5.2 is to require 1st Advance to repair, replace or refund (at 1st Advance's option) the defective item within a reasonable time at no charge to the Customer provided any such defect is notified to 1st Advance during the applicable warranty period. Customer shall provide all information as may be reasonably necessary to assist 1st Advance in repairing the defective item including, without limitation, sufficient information to enable 1st Advance to re-create the defect.

5.4 1st Advance shall not be liable for a breach of the warranties in clause 5.2 if such breach arises directly or indirectly because: (a) Customer makes or causes to be made any modifications to the Equipment or Software without 1st Advance's consent; (b) Equipment or Software is used in combination with any software or materials not supplied by 1st Advance or not recommended by 1st Advance; (c) Software or Equipment is used incorrectly; (d) causes external to the Software or Equipment including but not limited to failure or fluctuations of electrical power, fire, flood or other natural disasters.

## 6 Consultancy and Services.

6.1 Where Customer engages 1st Advance to provide:

(a) Services: the Services shall be provided in accordance with the Service Description for the Charges set out the Order Form; and/or

(b) Consultancy: Consultancy shall be provided in accordance with the work specification at the Charge rates or sum set out in the Order Form.

6.2 Where Services or Consultancy contain elements of project management Customer and 1st Advance shall prior the commencement of Services:

(a) each nominate an authorised representative who will be the prime point of contact ("Project Manager") for the provision of Services or Consultancy; and

(b) agree the appropriate methods and frequency of monitoring the progress of Services or Consultancy and fulfilment of the Agreement; and

(c) agree and define each respective parties obligations for the Services or Consultancy.

6.3 Subject to Customer complying with its obligations of confidentiality and payment under this Agreement, 1st Advance hereby grants a non-exclusive, licence in respect of its copyright in the 1st Advance Documentation, to the Customer to use, modify and adapt the same solely for its own internal business use with the intent that such licence shall take effect on any such copyright.

6.4 1st Advance shall own and be fully entitled to use in any way it deems fit any intellectual property skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing Consultancy or Services and any improvements made or developed during the course of Consultancy or Services. Nothing herein shall be construed or give effect to any transfer of right, title or interest in 1st Advance's intellectual property.

6.5 1st Advance warrants and undertakes to the Customer that

(a) subject to clauses 7.2 and 11.3 the Consultancy or Services will be provided in a timely and professional manner and 1st Advance shall use its reasonable endeavours to provide the same in accordance with any time schedules agreed in writing between the parties; and

(b) the Consultancy or Services will conform to the standards generally observed in the industry for similar services and will be provided with reasonable skill and care.

6.6 The Customer shall indemnify and keep indemnified 1st Advance in respect of any losses, costs, damages, claims and/or expenses incurred by 1st Advance due to any claims by a third party arising out of any use, access of the Services or modification of the Customer's computer systems accessed by 1st Advance and/or use of any materials supplied to 1st Advance by the Customer. The indemnity in this clause 6.6 shall survive the termination or expiry of this Agreement.

## 7. Customer Obligations.

7.1 Customer agrees to perform in a timely and professional manner all Customer obligations set out in the 1st Advance Documentation that are required for the provision of Consultancy or Services including but not limited

to: access to Customer premises or computer systems as is necessary; to afford 1st Advance reasonable working conditions and facilities; to promptly furnish the information requested of the Customer in the 1st Advance Documentation and ensure its employees or agents co-operate with 1st Advance.

7.2 If the provision of Consultancy or Service is delayed other than through the fault of 1st Advance Customer shall pay the Charges in respect of idle-time incurred for the delay including delay as a result of Customer's agents or sub-contractors. Any agreed time schedules shall be deferred to reasonable period of time or no less than the period of the delay.

## 8 Charges and Payment

8.1 Unless agreed otherwise in writing all Charges shall be paid by Customer: (a) as invoiced by 1st Advance and are payable within 30 calendar days of invoice in Sterling without deduction, set off or retention; and (b) on delivery/performance (in whole or in part) of Equipment, Software or Consultancy/Services; and (c) on a pro-rated basis for Services provided prior to the Initial Term during Consultancy; and (d) thereafter Service Charges annually by direct debit or similar standing order and each case in advance and prior to the commencement or continuation of Services; and (a) for TPP annually in advance from the Commencement Date.

8.2 1st Advance shall be entitled at any time and from time to time (subject as mentioned below) to increase/decrease the annual Charges by giving to the Customer not less than 30 days' prior written notice (effective on the next anniversary of the Commencement Date).

8.3 All Charges and prices stated are exclusive of value added tax, sales tax, gross tax withholding tax any other similar tax which may be applicable thereto and 1st Advance's reasonable charges e.g. travel, hotel, subsistence, delivery & insurance, cancellation and bank charges and other charges which shall be paid by Customer at the prevailing rates.

8.4 Failure of Customer to pay the Charges or any other sum due under this Agreement shall entitle 1st Advance without prejudice to any other rights and remedies to (a) charge interest on a daily basis from the date due at the rate of 4 percent above National Westminster Banks' base rate in force from time to time; and/or (b) suspend Services or terminate this Agreement, having given Customer written notification of intention to do so and Customer has failed to remedy its payment default within 14 days from the date of such first notification of any overdue amount.

## 9 Term and Termination.

9.1 Notwithstanding earlier termination under clause 9.2, this Agreement shall commence on the Commencement Date and continue: (a) Until the Consultancy is completed; and/or (b) In full force and effect for Services for the Initial Term (as set out in the Order Form) thereafter this Agreement shall continue for Services for successive 12 month periods unless a party gives written notice to terminate this Agreement to be received by the other party at least 60 days from the date of expiry and effective at the end of the Initial Term or any renewal thereof. TPP is supplied on a 12-month term only.

9.2 Either party may, by written notice terminate this Agreement immediately without prejudice to any other rights or remedies it may otherwise have if (a) the other party is guilty of any material breach, non-observance or non-performance of any of its obligations and does not remedy the same within 14 days of notice of such breach being given by the non-defaulting party; (b) the other party becomes insolvent or makes any special arrangement or any special assignment for the benefit of its creditors, or is the subject of a voluntary or involuntary filing under the bankruptcy laws of any jurisdiction; (c) the other party is adjudicated bankrupt; or (d) a receiver is appointed for the other party's business. The effective date of termination shall be the date of receipt of such notice.

9.3 Any termination of the Agreement shall discharge 1st Advance from any liability for further performance and shall entitle 1st Advance to enter Customer's premises and recover any Equipment and materials which are the property of 1st Advance and Customer shall immediately pay for any unpaid Charges, expenses and a reasonable sum for any work carried out by it prior to such termination.

## 10 Limitation of Liability

10.1 In no event shall either party be liable in contract, tort (including negligence), breach of statutory duty or otherwise howsoever for: (a) any loss of profit, loss of business, loss of goodwill, loss of contracts, loss of revenues or loss of anticipated savings; or (b) any increased costs or expenses; or (c) loss of, damage to or corruption of data; or (d) any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof arising out of or in connection with this Agreement even if the other has been advised of the possibility of such damages.

10.2 Subject to clause 10.3 and without prejudice to clauses 10.1 and 10.3 and the Customer's obligations to pay any Charges hereunder, the parties' maximum liability under this Agreement is limited in respect of each event or series of connected events, as follows: (a) to £1,000,000 in respect of direct physical damage to or loss of tangible property (b) to 125% of the Charges in respect of all other events but not exceeding £500,000 in any 12 month period from the Commencement Date.

10.3 Nothing in the Agreement excludes or limits the liability of either party for death or personal injury caused by its negligence to the extent that the same is prohibited by UK statute.

10.4 1st Advance's sole obligations and liabilities in respect of the provision of the Service, Consultancy, Equipment or Software are as stated in these Conditions and all other representations (innocent or negligent), conditions, warranties and terms express or implied whether by statute, law or otherwise are hereby excluded to the fullest extent permitted by law.

## 11 Miscellaneous

11.1 Each party shall treat as confidential such information obtained from the other pursuant to this Agreement (including, where the Customer is the recipient, without limitation, the Software and the 1st Advance Documentation) and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party. Each party shall ensure that its employees are aware of and comply with the provisions of this clause.

11.2 Customer shall not assign the benefit of this Agreement in whole or in part without the prior written consent of 1st Advance.

11.3 Neither Party shall be responsible for any failure to perform these obligations for reasons beyond its reasonable control.

11.4 Save as expressly stated herein or the enforcement of any intellectual property rights the parties hereby expressly exclude the provisions of the Contracts (Rights of Third Parties) Act 1999.

11.5 The UK shall be considered the principal place of performance of services or publication of material over the Internet or and this Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

11.6 No failure or delay of either Party in exercising any right, power, or privilege under these Conditions (and no course of dealing between the Parties) shall operate as a waiver thereof.

11.7 If any provision of these Conditions or any part of such provision is held invalid or unenforceable, the remainder of the provisions contained herein will not be affected thereby and each remaining provision or part thereof will be valid and enforceable to the full extent permitted by law.

11.8 This Agreement is not intended to create a joint venture or partnership between the Parties and neither Party is authorised to act as the agent of the other.

11.9 This Agreement represents the entire agreement between the parties to exclusion of all other communications and supersedes all other Agreements relating to the subject matter therefore.