



### STANDARD TERMS AND CONDITIONS

#### 1: DEFINITIONS:

This Agreement ("Agreement") between Facilitate Software & Consultancy Limited, with its principal place of business at 2 Blackheath Hill, London, SE10 8DE, UK ("Facilitate Software & Consultancy") and the licensee ("Licensee"), whose name and principal place of business are listed on the accompanying proposal, customer mandate or invoice (collectively "Documentation"), is entered into and shall be effective on the latest date the Agreement is executed by both parties ("Effective Date"). This Agreement governs the sale of any and all microcomputer software programs, sample data and related documentation (collectively "Software") together with a "Support & Maintenance" plan and any "Consultant Services" as specified in the Documentation, as well as any "Miscellaneous Items" as also specified therein.

#### 2: LICENCE:

With respect to the Licence for the Software as specified, the Licensee is bound by the terms and conditions as described in the Licence Agreement ("Licence Agreement") as set out clearly by the Product Manufacturer on the Product packaging and/or during the Software installation process. If the Customer does not agree to the terms of the Licence, they should return the Software, where possible unopened, to the point of acquisition for a credit or refund.

#### 3: TERM, TERMINATION, SURVIVABILITY:

The term of this Agreement shall commence on the Effective Date and shall continue for an initial period of one (1) year, unless earlier terminated in accordance with this Agreement. Thereafter, this Agreement shall renew for successive one (1) year periods upon payment to and acceptance by Facilitate Software & Consultancy of the annual Support & Maintenance Fee as required by paragraph 5, below. Absent any material default or breach hereof by Licensee, termination of this Agreement shall not terminate Licensee's right to continued use of the Software actually delivered during the term of this Agreement, subject to the other terms and conditions of this license. All payment, proprietary data and confidentially obligations of Licensee to Facilitate Software & Consultancy hereunder shall survive any termination of this Agreement.

#### 4: PAYMENT:

Licensee agrees to pay Facilitate Software & Consultancy on invoice within the payment terms as specified in the Documentation all and any monies due for products and services as described in the Documentation. The prices quoted in the Documentation are current, exclusive of VAT, given in GBP (£ Sterling) unless otherwise stated, as per the date of issue and subject to change without prior notification. In the event of any fees remaining outstanding beyond this period, we reserve the right to charge interest at a rate of 2% per month (26.8% APR), until the bill is paid. Any discounts or special offers as described in the Documentation are valid only for the period up to the agreed expiry date. Facilitate Software & Consultancy cannot be held responsible for any revisions to the prices or the service provision quoted in the Documentation which are consequential to revisions made by the Product Manufacturers and/or third party service providers. No term or condition in any License purchase order, except for the quantity of products or services, shall be binding on Facilitate Software & Consultancy unless accepted by Facilitate Software & Consultancy in writing. No purchase order shall be binding until accepted by an authorised representative of Facilitate Software & Consultancy.

#### 4.1: In the event that full payment of discounted Gold Service Consultancy hasn't been received by Client

Technologies within 40 days of invoice date, Facilitate Software & Consultancy reserve the right to withhold future consultancy until payment is received in full.

#### 4.2: In the event that full payment of discounted Gold Service Consultancy hasn't been received by Client

Technologies within 45 days of invoice date, Facilitate Software & Consultancy will raise an additional invoice to recover the discounted rate of consultant services between the cost per day rate of consultancy and the discounted rate of the Gold Service Consultancy quotation. Facilitate Software & Consultancy are not obliged to inform customer of the raising of additional invoice.

#### 5: SUPPORT & MAINTENANCE FEES:

1. Software supplied by Facilitate Software & Consultancy is sold together with mandatory annual Support & Maintenance cover, as described in Paragraph 6 below, in accordance with the then current Support & Maintenance programme as determined by the Product Manufacturer. Support & Maintenance fees are calculated either as a percentage of the then current list price or as a fixed fee for the Software registered to Licensee. Support & Maintenance is recalculated annually and is paid by the Licensee prior to the commencement of the Support & Maintenance period. There is a reinstatement fee for lapsed coverage, charged in accordance with the then current Support & Maintenance programme.

2. The Support & Maintenance Period shall commence on the Effective Date and shall continue for a period of one (1) year, unless earlier terminated in accordance with this Agreement. Any additional Software, with the exclusion of the updates and upgrades as described in Paragraph 6, registered during the period of Licensee's then current active Support & Maintenance will also be subject to a similar Support & Maintenance Fee which will be calculated pro-rata in whole calendar months against the remaining period of Licensee's Support & Maintenance.

3. Licensee will be invoiced for subsequent years annual Support & Maintenance cover between thirty (30) and sixty (60) days prior to the expiration of their then current Support & Maintenance period unless Licensee notifies Facilitate Software & Consultancy in writing of their desire not to renew no later than sixty (60) days prior to the expiration date. If Licensee chooses to cancel Support & Maintenance at anytime during the period of cover, no refund, pro-rated or otherwise, will be given. Facilitate Software & Consultancy is under no obligation to reinstate Support & Maintenance cover at any point subsequent to its cancellation by the Licensee. Any subsequent renewal of Support & Maintenance will be subject to a reinstatement fee charged in accordance with the then current Support & Maintenance programme.

#### 6: SOFTWARE SUPPORT AND MAINTENANCE ENTITLEMENT:

For the term of this Agreement and upon payment of the annual Support & Maintenance Fee for the Software registered to Licensee, Facilitate Software & Consultancy agrees to provide Licensee with the following:

6.1: Support & Maintenance comprises Technical Support, as well as any Maintenance Releases, Software Upgrades or "like software" which the Product Manufacturer may make generally available during the Support & Maintenance period. If Licensee fails to make timely payment of the Support & Maintenance Fee, Facilitate Software & Consultancy shall have no obligations under this paragraph and Licensee shall forfeit the right to Software Upgrades, Maintenance Releases and/or Technical Support for the remaining term of the Agreement. The Product Manufacturer shall have the sole discretion to determine which, if any, new software releases constitute "like product" hereunder.

6.2: Facilitate Software & Consultancy agrees to provide Technical Support between the hours of 9.00am to 5.00pm Greenwich Mean Time (GMT) or British Summer Time (BST) as appropriate, Monday through Friday, excluding English public holidays. Licensee shall appoint up to three (3) individuals to serve as a Technical Support Contact ("TSC"). A TCS may contact Facilitate Software & Consultancy by telephone, facsimile and/or e-mail. Facilitate Software & Consultancy shall respond to such an enquiry within eight (8) business hours. Business hours are defined as any sixty (60) minute period between the hours of 9.00am and 5.00pm GMT Monday through Friday excluding English public holidays. The TCS will be given a unique reference number for each new enquiry which should be used in all related correspondence.

6.3: Facilitate Software & Consultancy agrees to provide Technical Support to assist with a support issue ("Incident"). An Incident is defined as any singular issue with regard to the day-to-day use and administration of the Software insofar as there is a legitimate issue hindering the standard functionality of the Software. Facilitate Software & Consultancy shall have no obligation to provide assistance if the Incident is due to a malfunction of hardware, software not supplied by Facilitate Software & Consultancy, modifications to the Software not made by Facilitate Software & Consultancy, or use of the Software in a manner not in accordance with the operating instructions for the Software. Technical Support can only offer assistance for modified Software in cases where Licensee has supplied Facilitate Software & Consultancy with a copy of the modifications to their Software. Facilitate Software & Consultancy may offer assistance with debugging code, but not with the actual writing of new code which is classified as Consultant Services and thus fall out with the remit of Technical Support.

6.4: Support & Maintenance cover is only provided for the current and immediately prior release of the Software. E.g. if version 3.0 is the current release, support will be provided for versions 3.0 and 2.1, and support for version 2.0 will cease ninety (90) days following the release of version 3.0. Licensee will be given ninety (90) days advance notice before support and maintenance cover for previous versions of the Software is discontinued.

6.5: Nothing herein shall obligate either Facilitate Software & Consultancy or Product Manufacturer to fix any bug or defect which may exist in the Software or any subsequent version of the same.

#### 7: CONSULTANT SERVICES:

7.1: All Consultant Services provided by Facilitate Software & Consultancy will be performed in a professional manner by qualified personnel. Facilitate Software & Consultancy shall not be obliged to provide Consultant Services for hardware or software not supplied by Facilitate Software & Consultancy. Licensee shall be solely responsible for acquiring, installing and maintaining all the computer hardware and the appropriate environment required for the day-to-day use and administration of the Software and Facilitate Software & Consultancy shall not be held responsible for any hindrances, delays or inconveniences due to the lack or malfunction thereof.

7.2: Licensee must provide their recommendations and specifications in writing ("Statement of Work") at least two (2) business days prior to the pre-arranged date the Consultant Services are due to take place. The Statement of Work enables the Facilitate Software & Consultancy Consultant ("CT Consultant") to establish that the specifications set forth therein fall within the remit of Consultant Services, to undertake any necessary preparatory work to ensure the most efficient and effective use of their time and thus advise the Licensee if the Statement of Work can be completed in the time allowed. If no Statement of Work is forthcoming Facilitate Software & Consultancy cannot be held responsible for the failure to meet and fulfil Licensee's specifications, nor for the necessity to extend the period for Consultant Services at Licensee's own cost.

7.3: Consultant Services are available between the hours of 9.00am to 5.00pm GMT or BST as appropriate, Monday through Friday, excluding English public holidays. The FSC Consultant shall adhere to a schedule of eight (8) business hours per day. These hours are flexible insofar as they have been mutually pre-arranged between the Licensee and the FSC Consultant. Notwithstanding this mutual arrangement any Consultant Services undertaken outside these hours will incur an additional fee and/or recalculation of the duration of the schedule. Consultant Services Should this location require a standard commute of more than one hundred (60) miles or two (2) hours duration from the Consultant's normal place of work an overnight stay will be incurred. Otherwise the travelling time will be incorporated into the time required to undertake the Consultant Services.

7.4: Any Consultant Services shall be deemed accepted within five (5) business days from delivery by Facilitate Software & Consultancy unless Licensee provides Facilitate Software & Consultancy with written notice that the Consultant Services do not conform to the specifications set forth on the Statement of Work.

7.5: Consultancy Services may be offered to the Licensee under the terms of "Gold Service" whereby Consultant Services are offered at a significant discount when five (5) or ten (10) days Consultancy Services are purchased in advance. The onus is on the Licensee to ensure these Consultancy Services are scheduled and utilised within twelve (12) months of purchase. No refunds, pro-rata or otherwise will be available upon expiry of this period.

7.6: The fee for all Consultant Services is quoted exclusive of reasonable travel, accommodation and subsistence expenses ("Consultant Expenses") which Facilitate Software & Consultancy personnel may incur while undertaking any on-site Consultant Services at Licensee's principal place of business. Licensee hereby agrees to pay to Facilitate Software & Consultancy on invoice all and any such Consultant Expenses upon receipt.

7.7: Facilitate Software & Consultancy reserves the right to cancel or postpone Consultant Services, withdraw a FSC Consultant and/or replace them with another FSC Consultant. Facilitate Software & Consultancy will endeavour to give Licensee reasonable notice and advise Licensee of any such changes to the Consultant Services schedule, but this may not always be possible. Facilitate Software & Consultancy will endeavour to reschedule any such appointments at the earliest mutually convenient time.

7.8: Licensee agrees for the duration of this Agreement and for 1 year after its expiry, not to directly or indirectly employ or engage as an employee or contractor, nor solicit the employment of, Facilitate Software & Consultancy employees that are or were connected with or have come into contact with the Licensee as a result of this Agreement without Facilitate Software & Consultancy prior written agreement and payment by Licensee to Facilitate Software & Consultancy of no less than 100% of the Facilitate Software & Consultancy employees current total annual earnings as applicable on or before the date of leaving.

#### 8: TRAINING:

8.1: Facilitate Software & Consultancy may from time to time organise and run various training courses for the mutual benefit of the Licensee and/or other clients of Facilitate Software & Consultancy. These training courses may be held at a Facilitate Software & Consultancy training facility or on-site at the Licensee's principal place of business. In the latter case, the training will be deemed as falling under the remit of Consultant Services and the same conditions as described in Section 7 will apply thereto.

8.2: Facilitate Software & Consultancy reserves the right to cancel or postpone any scheduled training course. Facilitate Software & Consultancy will endeavour, but cannot guarantee, to inform Licensee of any such cancellation or postponement no later than five (5) business days prior to the commencement date of the course. In this case new arrangements will be made for Licensee's attendance of a future training course.

8.3: If for whatever reason the Licensee cancels their place on a training course they will incur one or more of the following penalties. Cancellation within twenty (20) business days, the Licensee will not be liable to any charges. Cancellation within ten (10) business days, the Licensee will be liable to pay ten percent (10%) of the course fees. Cancellation within five (5) business days, the Licensee will be liable to pay twenty-five percent (25%) of the course fees. Cancellation within two (2) business days, the Licensee will be liable to pay fifty percent (50%) of the course fees. Cancellation within one (1) business day, the Licensee will be liable to pay seventy-five percent (75%) of the course fees. Should the Licensee for whatever reason fail to complete the course, no monies will be refundable and any outstanding balance must be paid in full.

#### 9: OTHER PROVISIONS:

9.1: **WAIVER:** The waiver by either party of a breach or default of any of the provisions of this Agreement 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 hereunder operate as a waiver of any breach or default by the other party. Notwithstanding anything to the contrary contained herein, Facilitate Software & Consultancy retains the right to terminate this Agreement or individual parts thereof having notified the Licensee thirty (30) days in advance of this or any similar decision.

9.2: **INVALIDITY AND SEVERABILITY:** If any provision of this agreement 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 this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

9.3: **ENTIRE AGREEMENT:** Facilitate Software & Consultancy shall not be liable to the Licensee for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this agreement other than those representations agreements statements or undertakings expressly incorporated or referred to in this agreement. The Licensee accepts that the Software was not designed and produced to its individual requirements and that it was responsible for the selection of the Software.

9.4: **SUCCESSORS:** This agreement shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.

9.5: **ASSIGNMENT AND SUB-LICENSING:** Neither party shall be entitled to assign the benefit of this Agreement or transfer, delegate or sub-contract any of its duties or obligations without the prior written consent of the other party, which consent shall not be unreasonably withheld, save if by the Licensee in the event of restructure or reorganisation, in which case the consent of Facilitate Software & Consultancy is deemed to be given.

9.6: **REVISIONS:** All prices and fees quoted herein are current and subject to change without prior notification. Facilitate Software & Consultancy cannot be held responsible for any revisions to the pricing or service provision quoted herein which are consequential to revisions made by third party software or service providers. Facilitate Software & Consultancy reserves the right to amend these Terms & Conditions at any time. Facilitate Software & Consultancy reserves the right to agree separate Terms & Conditions with Licensee.

9.7: **VAT:** Save insofar as otherwise expressly provided all amounts stated in the Documentation or in this Agreement are expressed exclusive of value added tax and any value added tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of the same be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefor.

9.8: **HEADINGS:** Headings to clauses in this agreement are for the purpose of information and identification only and shall not be construed as forming part of this agreement.

9.9: **LAW:** This agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts.

Last Revised 24/05/08.