

## TM2 SUPPORT SERVICE - STANDARD TERMS AND CONDITIONS

### 1. Interpretation

In these Conditions the following words shall have the following meanings:

- 1.1 "Additional Charges" means Blue Zinc's charges, based on its rates applying from time to time, for work undertaken on a time and materials basis;
- 1.2 "Support Charge" means the charge for the Support Service, as set out in the Contract, and as may be varied from time to time pursuant to Condition 3.3;
- 1.3 "Blue Zinc" means Blue Zinc IT Ltd (No. NI043881) whose registered office is at Erwin House, 18-22 Church Road, Holywood, County Down, BT18 9BU;
- 1.4 "Compatible Software and Operating Systems" means Microsoft® Office or such other software as Blue Zinc may confirm in writing to the Customer is compatible with the Software, Operating Systems means Microsoft® Windows XP SP2, Windows 2000 SP4, Windows 2003 (all editions) SP1 or R2, Vista Home Basic and Windows 7 Operating Systems or such other operating system as Blue Zinc may confirm in writing to the Customer;
- 1.5 "Customer" means the person, company or organisation who will receive the Support Service and whose name and invoice address is set out in the Contract;
- 1.6 "Contract" means the contract between Blue Zinc and the Customer for the provision of the Support Service, comprising these Conditions, Blue Zinc's quotation for the Support Service and Blue Zinc's order form for the Support Service, as completed and signed by the Customer;
- 1.7 "Documentation" means instruction manuals, user guides and other information to be made available to the Customer from time to time during the Contract by Blue Zinc at its discretion in either printed or machine readable form;
- 1.8 "Effective Date" means the date set out in the Contract for the commencement of the Support Service;
- 1.9 "Insolvency Event" means if a party is unable to pay its debts, or becomes insolvent, or is subject to an order or resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction;
- 1.10 "New Release" means any improved, modified or corrected version of any of the Software or Documentation (or any version which adds functionality or otherwise amends or upgrades the Software) from time to time issued by Blue Zinc pursuant to Condition 2.2 below;
- 1.11 "Normal Business Hours" means the hours between 9.00am and 5.30pm, on a Working Day;
- 1.12 "Site" means the Customer's premises specified in the Contract or such other premises as Blue Zinc may in writing specify;
- 1.13 "Software" means the software specified in the Contract and includes any New Release thereof issued to the Customer in accordance with Condition 2.2;
- 1.14 "Software Licence" means the licence between Blue Zinc and the Customer for the use of the Software;
- 1.15 "Support Service" means support of the Software to be provided to the Customer by Blue Zinc as described in Condition 2 and in accordance with these Conditions.
- 1.16 "Working Day" means Monday to Friday inclusive but excluding statutory and public holidays in England;
- 1.17 "Year" means the period of 12 months from the Effective Date and each consecutive period of 12 months thereafter during the continuance of the Contract.

### 2. Support Service

- 2.1 Blue Zinc shall, in consideration for payment by the Customer of the Support Charge in accordance with Condition 3, provide to the Customer, during Normal Business Hours, the Support Service as set out in this Condition 2.
- 2.2 The Support Service comprises all or any of the following categories of support (as required by the Customer):
  - 2.2.1 advice by telephone on the use of the Software (category 'A');
  - 2.2.2 information and advice by telephone or post on forthcoming New Releases of the Software (category 'B');
  - 2.2.3 upon request by the Customer, the diagnosis of faults in the Software and the rectification of such faults (remotely or by attendance on Site as determined by Blue Zinc at its discretion) by the issue of fixes in respect of the Software and the making of all necessary consequential amendments (if any) to the Documentation (category 'C');
  - 2.2.4 the creation and dispatch to the Customer from time to time, at Blue Zinc's sole discretion, of New Releases (category 'D').
- 2.3 The Customer shall supply in writing to Blue Zinc a detailed description of any fault requiring Support Services within category C described above and the circumstances in which it arose, forthwith upon becoming aware of same.
- 2.4 Blue Zinc shall use its reasonable endeavours to respond to the Customer within 24 Normal Business Hours of receipt of a request for category C support.
- 2.5 The Support Service does not include the diagnosis and/or rectification of any fault resulting from:
  - 2.5.1 the misuse, incorrect or improper use, operation or neglect of the Software from whatever cause or any failure to comply with the terms of the Software Licence, including failure or fluctuation of electrical power;
  - 2.5.2 the modification of the Software or its merger (in whole or in part) with any other software;
  - 2.5.3 the use of the Software in conjunction with software other than Compatible Software and Operating Systems, (where the user chooses to install the Software on a native Apple Mac Operating System, support for the Software will only be provided for the application itself and support will not be given for any issue relating to the underlying operating system);
  - 2.5.4 the failure by the Customer to implement recommendations in respect of, or solutions to faults previously advised by Blue Zinc;
  - 2.5.5 any repair, adjustment, alteration or modification of the Software by any person other than Blue Zinc without Blue Zinc's prior written consent;
  - 2.5.6 any issue caused by the hardware upon which the Software is installed;
  - 2.5.7 the Customer's failure to install and use any New Release of the Software within seven days of receipt of the same;
  - 2.5.8 the infiltration of the Customer's computer system of virus or worm. Virus protection is the Customer's sole responsibility;
  - 2.5.9 the failure to maintain the necessary environmental conditions for use of the Software;
  - 2.5.10 any breach of the Customer's obligations under these Conditions; or
  - 2.5.11 operator error.
- 2.6 Blue Zinc may, upon request by the Customer and at its discretion, provide the Support Service notwithstanding that the fault results from any of the circumstances described in Condition 2.5 above. Blue Zinc shall in such circumstances be entitled to levy, and the Customer shall pay, Additional Charges.
- 2.7 Blue Zinc shall be entitled to levy, and the Customer shall pay, reasonable Additional Charges below if the Support Service requested by the Customer is provided in circumstances where Blue Zinc, having regard to the level of skill and experience which may reasonably be expected from a competent data processing operator, judges the Customer's request for the same to have been unnecessary.
- 2.8 The Customer shall:
  - 2.8.1 provide Blue Zinc (and its authorized personnel) with full, safe and uninterrupted access (including, if requested, remote access) to the Site, Customer's systems and facilities and the Software as may reasonably be required for the purposes of performing the Support Service, such access, except as otherwise agreed by the parties, to be within the Normal Business Hours;
  - 2.8.2 ensure that appropriate environmental conditions are maintained for the Software and shall take all reasonable steps to ensure that the Software is operated in a proper manner by the Customer's employees;
  - 2.8.3 nominate a point of contact to be available to liaise with, and respond to queries from, Blue Zinc;
  - 2.8.4 co-operate with Blue Zinc in performing the Support Service and provide any assistance or information as may reasonably be required by Blue Zinc, including in relation to the diagnosis of any faults;
  - 2.8.5 report faults promptly to Blue Zinc;
  - 2.8.6 keep full backup copies of all of its data;
  - 2.8.7 indemnify Blue Zinc against any damages, losses, costs (including legal fees) and expenses incurred by or awarded against Blue Zinc as a result of the Customer's breach of the Contract or any negligence or wrongful act of the Customer, its officers, employees, contractors or agents.

### 3. Charges

- 3.1 The Support Charge (together with value added tax thereon) shall be levied by Blue Zinc with effect from the Effective Date as specified in the Contract and shall be payable by the Customer by Direct Debit, Cheque or Bank Transfer as set out in the Contract.
- 3.2 Additional Charges (if any) which become payable under these Conditions shall be invoiced by Blue Zinc monthly in arrears and shall be paid by the Customer (together with value added tax thereon) within 30 days of receipt of Blue Zinc's invoice.
- 3.3 Blue Zinc shall be entitled at any time, by serving not less than 60 days' notice on the Customer, to alter the amount of the Support Charge, provided that the Customer shall, on receipt of such notice, be entitled to serve not less than 30 days' notice to terminate the Contract, such notice to take effect on the date on which such increase becomes effective.
- 3.4 If any sum payable under the Contract or under any other contract between Blue Zinc and the Customer is not paid within seven days after the due date then (without prejudice to Blue Zinc's other rights and remedies) Blue Zinc reserves the right:
  - 3.4.1 to charge interest on such sum on a day to day basis (whether or not as before any judgment) from the due date to the date of payment (both dates inclusive) at the rate of 2% per annum above the base rate of HSBC PLC. Such interest shall accrue on a daily basis and be compounded quarterly; and/or
  - 3.4.2 to suspend performance of the Support Service until the date of payment in full of all amounts owed (including any interest accrued).
- 3.5 All amounts payable under the Contract are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.

### 4. Warranty

- 4.1 Subject to the exceptions set out in Condition 4.2 below and the limitations upon its liability in Condition 5, Blue Zinc warrants that it will perform the Services with reasonable care and skill. If, during the term of the Contract, Blue Zinc receives written notice from the Customer of any breach by Blue Zinc of the warranty in this Condition 4.1, Blue Zinc shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate the Contract immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to Blue Zinc under the Contract during the Year in which the termination occurs, less a charge for the Support Service provided up to the date of termination. The Customer shall provide all information reasonably necessary to enable Blue Zinc to comply with its obligations under this Condition. This Condition sets out the Customer's sole remedy and Blue Zinc's entire liability for any breach of the warranty in this Condition 4.1.
- 4.2 Blue Zinc shall have no liability to the Customer for loss or damage which arises as a result of any of the circumstances described in Condition 2.5 above.
- 4.3 Subject to the foregoing, all conditions, warranties, terms and undertakings (express or implied by law) which might otherwise have effect in respect of the provision of the Support Service are hereby excluded (provided that nothing in the Contract shall be deemed to effect the statutory rights of consumers where the Customer is a consumer for the purposes of such statutory rights). No representation or warranty is given by Blue Zinc that all faults will be fixed, or will be fixed within a specified period of time.

### 5. Limitation of Liability

- 5.1 Blue Zinc (except in respect of death or personal injury caused by the negligence of Blue Zinc, its employees, agents or authorized representatives, liability for which shall not be limited) shall not be liable to the Customer for any indirect, special, incidental or consequential loss or damage (including without limitation, loss of income, loss of business profits or contracts, business interruption, loss of anticipated savings, loss of information, loss of opportunity, goodwill or reputation or loss of, damage to, or corruption of data), whether arising in contract, tort (including negligence), misrepresentation or otherwise.
- 5.2 Notwithstanding the generality of Condition 5.1 above, Blue Zinc expressly excludes liability for consequential loss or damage which may arise in respect of the Software, any other software, data, modem, router, switches, gateways, internet activity or other hardware, or other equipment or property.
- 5.3 Notwithstanding the generality of Condition 5.1 above, Blue Zinc expressly excludes liability for loss or damage where the Customer is under contract with a 3<sup>rd</sup> party for any form of IT support or maintenance and does not expressly make Blue Zinc aware of the existence of this 3<sup>rd</sup> party before Blue Zinc undertake any form of support whether via telephone, email or remotely accessing a Customer's computer.
- 5.4 Subject to Conditions 5.1-5.3 (inclusive), Blue Zinc's maximum aggregate liability under or in connection with the Contract, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall be limited to a sum equal to the Support Charge paid by the Customer to Blue Zinc in the Year in which the liability arises.
- 5.5 Subject to the foregoing, Blue Zinc's liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in the UK.
- 5.6 All dates supplied by Blue Zinc for delivery of the Support Service shall be treated as approximate only. Time is not of the essence for performance of the Support Service.

### 6. Term and Termination

- 6.1 The Contract shall commence on the Effective Date and, subject to any earlier termination in accordance with the terms of the Contract, shall continue thereafter for an initial period of 12 months ("Initial Period"). Upon expiry of the Initial Period, subject to the remainder of this Condition 6, the Contract shall automatically renew for subsequent periods of 12 months each.
- 6.2 The Contract may be terminated:
  - 6.2.1 following expiry of the Initial Period by either party upon giving not less than 30 days' notice to the other, such notice to expire at the end of a calendar month;
  - 6.2.2 forthwith by either party if the other commits any material breach of any term of the Contract and which (in the case of a breach capable of being remedied) shall not have been remedied within 10 Working Days

- of a written request to remedy the same;
- 6.2.3 forthwith by either party if the other suffers an Insolvency Event;
- 6.2.4 forthwith by Blue Zinc if the Software Licence is terminated for any reason;
- 6.2.5 by Blue Zinc if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified by Blue Zinc that payment remains outstanding; or
- 6.2.6 by Blue Zinc, upon giving the Customer no less than 30 days' notice, in the event that the Customer has failed to install and use any New Release of the Software within 6 months of Blue Zinc having dispatched that New Release to the Customer.
- 6.3 Any termination of the Contract pursuant to this Condition shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 6.4 The Customer shall not, upon termination of the Contract, be entitled to any rebate or refund in respect of the Support Charge.
- 7 Copyright**  
The Customer acknowledges that any and all of the copyright, trade marks, trade names, patents and other intellectual property rights subsisting in the Software, Documentation, know-how or other works created or supplied by Blue Zinc (whether alone or jointly) in the course of providing the Support Service, throughout the world are and remain the sole property of Blue Zinc and its licensors and the Customer shall have no rights in respect of same except as expressly granted in the Contract.
- 8 Force Majeure**  
Blue Zinc will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under the Contract that is caused by an event outside its reasonable control.
- 9 Waiver**  
The waiver by either party of a breach or default of any of the provisions of the Contract 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.
- 10 Notices**  
10.2 Any notice required to be given by either party to the other shall be in writing and may be given by hand or sent by first class pre-paid letter post, facsimile transmission or any comparable means of communication to the other party at the address stated in the Contract or such other address as may be subsequently notified to the other party.
- 10.3 Any notice will be deemed to have been received if by hand upon delivery; if by post, three days after posting; and if by email, upon being sent.
- 11 Invalidity and Severability**  
If any provision of the Contract 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 the Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 12 Entire Agreement**  
12.2 The Contract, and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Contract.
- 12.3 The Customer acknowledges and agrees that in entering into the Contract, it does not rely on, and shall have no remedy in respect of any statement, representation (unless fraudulent), warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract.
- 13 Assignment**  
The Customer shall not be entitled to assign or otherwise transfer the Contract nor any of its rights or obligations hereunder without the prior written consent of Blue Zinc. The Contract is binding on the Customer and Blue Zinc and each of the parties' respective successors and assigns.
- 14 Non-solicitation**  
The Customer shall not, during the term of the Contract, and for a period of 6 months following its termination, directly or indirectly induce or attempt to induce any employee of Blue Zinc who has been engaged in the provision, receipt, review or management of the Support Service or otherwise in connection with the Contract to leave the employment of Blue Zinc.
- 15 Law**  
The Contract shall be governed by and construed in accordance with Northern Irish law and the parties hereto agree to submit to the non-exclusive jurisdiction of the Northern Irish courts.