

TERMS AND CONDITIONS

JEK SOFTWARE LIMITED

1. DEFINITIONS

1.1 In this document the following words shall have the following meanings;

"Client" means any person who purchases Services from the Company;

"Company" means JEK Software Support Ltd;

"Confidential Information" means information in respect of an individual or Client relating to:

- a) its business methods, plans, systems, finances or projects;
- b) its trade secrets; or

The provision of products or services of the individual or Client to which it attaches confidentiality or in respect of which it holds an obligation to a third party.

"Documents" includes, but is not limited to, inventions, improvements, promotions, formulae, designs, models, prototypes, programs, sketches, drawings, manuals, suggestions, strategies, materials, interventions and plans;

"Intellectual Property" means , any patent, registered or unregistered trade mark or service mark, copyright, registered design or mark, any application for any of the foregoing, any right in respect of technical or commercial information and any other form of protection; any suggestion, strategy, package, document, intervention, option, or solution; all verbal, written and recorded work by the Company;

"Order Form" means a statement of work, quotation or other similar document describing the Services to be provided by the Company.

"Services" means the services specified in the Order Form.

"Terms and Conditions" means the terms and conditions of supply set out in this document and any special terms and conditions agreed in writing by the Company.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 "this Agreement" or to any other Agreement or document referred to in this Agreement means this Agreement or such other Agreement or document as amended, varied, supplemented, modified or novated from time to time and includes the Schedules;
- 1.2.2 Clauses and Schedules are references to Clauses and Schedules of and to this Agreement and references to Sub-Clauses and Paragraphs are, unless otherwise stated, references to Sub-Clauses or Paragraphs of the Clause or Schedule in which the reference appears.

1.3 In this Agreement:

- 1.3.1 all Agreements on the part of any of the parties to the Agreement which comprise more than one person or entity shall be joint and several;
- 1.3.2 any reference to the parties includes a reference to their respective personal representatives, heirs, successors in title and permitted assignees;

- 1.3.3 any reference to a person includes any body corporate, unincorporated association, partnership or any other legal entity;
 - 1.3.4 words importing the singular number include the plural and vice versa; and
 - 1.3.5 words importing any gender include any other gender.
- 1.4 The headings in this Agreement are for convenience only and shall not affect its interpretation.

2. SERVICE

“JEK TimeCost” is a web based application to capture details of time spent on activities by staff, expenses associated with an activity and income associated with an activity. It stores the information in databases provided by the hosting Company and uses it to produce useful reports for management.

3. ORDER FORM

The Company shall reserve the right to refuse to accept any order for the sale or supply of Services without any necessity to state or offer a reason for doing so.

The Order Form signed by the Client shall constitute an irrevocable offer by the Client to purchase the Services which may be accepted by the Company on receipt.

4. SERVICES

The Services are as set out in the Order Form and at the agreed Fee. The Services includes use of the Company’s online help desk, initial set up and problem resolution. Additional Services may be available at an additional charge including but not limited to data migrations from existing electronic systems, on-site training or configuring the system and running reports and extracts for Clients on JEK Software Support Ltd’s premises and sending the report to the Client. A pricing structure will be discussed and agreed upon by both parties before any additional Services are supplied.

5. PAYMENT

Charges are as set out on the website and contained within the Order Form. The Company will invoice the Client at the end of each calendar month for usage of the Services. Unless otherwise agreed in writing all accounts are due for payment within 30 days of the date of invoice.

If any accounts remain unpaid by that date, the Company reserves the right to:

- i) Withhold all further Services and/or cancel the contract
- ii) Charge interest and fees on all due monies as provided for by the late Payment of Commercial Debts (Interest) Act 1998 as amended until payment (including any costs incurred) has been paid.

6. INTELLECTUAL PROPERTY

The parties agree that all Intellectual Property (as defined above) and including but not exclusively all the documents, software consultations, papers, , materials, discussions and communications specifically produced by or on behalf of the Company in connection with or relating to this Agreement shall vest in and belong to the Company. Intellectual property rights also vest in any customised Services provided to the Client

The Client shall at the request of the Company, take all such steps and execute all such assignments and other documents as the Company reasonably require to ensure that all the Intellectual Property vests in and belongs to the Company or the Company and for the registration or protection of the Company' rights in Intellectual Property.

7. DATA

JEK Software Support Ltd will not pass the Client's details to any other party except where required to do so by law or where necessary to enable the Company to provide, support and invoice for its service(s).JEK Software Support Ltd will keep its Clients informed of by email of improvements to the product and other related services that might be of interest to them.

7.1 Client's data

- The Service uses normal internet user name and password security to control who can access and view the Service. The parties agree that this is sufficient for the intended use of the Service. JEK Software Support Ltd does not believe the data to be highly sensitive or of any use to anyone other than the Clients themselves.
- The Company are unable to guarantee complete data security. The Client is advised that they should not store sensitive data on the system unless there is an over-riding business reason for doing so.

7.2 JEK Software Support Ltd will take reasonable steps to ensure the security and integrity of Client's data by choosing responsible service providers and having procedures in place to mitigate the risk of loss/damage to Client's data. However there may be some risk that data (or part of the data) could be lost or damaged. To mitigate this, the Company will provide Clients with:

7.2.1 The ability to extract key data from the system;

7.2.2 The ability to extract data using a reporting interface;

7.2.3 The ability to generate printer friendly versions of reports;

7.2.4 The option to provide Clients with full extracts of their data on request for which they may be charged of a suitable fee.

- 7.3 In the event a Client causes damage to their own data JEK Software Support Ltd cannot guarantee to repair the damage caused or to revert to a previous version. If the Company is able to repair the damaged data and it is established to be the Client's fault, JEK Software Support Ltd reserve the right to charge the Client for doing so at the Company's normal rate for proprietary work.
- 7.4 For the duration of this Agreement the Company will store data to the beginning of the last calendar year or organisational year whichever is the earlier. If JEK Software Support Ltd is required to store data for longer than this they reserve the right to make an additional storage charge for doing so.

8. CONFIDENTIAL INFORMATION

Each of the parties agrees with the other that it shall keep any information designated as confidential or which is otherwise clearly confidential in its nature received by it relating to the Goods, the business, assets, affairs and financial results of either party with the exclusion of any information that is already in the public domain

9. LIMITATION OF LIABILITY

The Company does not provide a warranty.

The Company shall have no liability to the Client, the user or any third party for the consequential or incidental damages of any kind whatsoever (other than that for death or personal injury caused by the negligence of the Company) by reason of any representation or any implied warranty, condition or other term or any duty at common law or under the express terms of the warranty for any consequential or incidental loss or damage including, without limitation any indirect loss or damage such as operating loss, costs, expenses, loss of Clientele or damage to the Client's image or reputation or any other claims for consequential compensation whatsoever which may arise out of or in connection with the supply of JEK Software Support Ltd 's Services or their use by the Client or the user.

10. TERMINATION

- 10.1 The Company may terminate this Agreement by the giving of one months notice.
- 10.2 Notwithstanding clause 10.1 The Company may terminate this Agreement with immediate effect by giving written notice to the Client if the Client:
- 10.2.1. commits any breach of this Agreement, and, in the case of a breach which is capable of remedy, fails to remedy it within 21 days' of receiving written notice giving full particulars of the breach and requiring the same to be remedied; or
 - 10.2.2 goes into liquidation or receivership, has a receiver appointed over a significant part of its assets or takes or suffers any similar action as a result of debt or anything analogous occurs under the law of any jurisdiction in relation to the Client.

- 10.3 For the purposes of Paragraphs 10.2.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance.
- 10.4 The right to terminate this Agreement in accordance with this Clause 10 shall not prejudice any other right or remedy of either party in respect of the breach concerned or any other breach.

11. EFFECTS OF TERMINATION

Upon the termination of this Agreement for any reason:

- 11.1 Any sum owing by either party to the other under any provisions of this Agreement shall become immediately payable;
- 11.2 Any provision of this Agreement which is expressed to continue in force after termination shall continue in full force and effect; and
- 11.3 Except in respect of accrued rights, neither party shall be under any further obligation to the other.

12. NON-ASSIGNMENT BY THE CLIENT

The Client shall not (but JEK Software Support Ltd. shall) be entitled to assign transfer or sub-licence all or any part of this Agreement or of its rights and obligations hereunder.

13. WARRANTY BY THE CLIENT

The Client hereby warrants to JEK Software Support Ltd that it is an ultimate end-user of the Services. In the event of the Client not being the ultimate end user the Client shall fully indemnify, save, defend and hold harmless the Company against any and all loss, damages, liabilities, claims, judgements, decree awards, actions, costs and expenses arising in connection with a claim for any third party or end user.

14. WAIVER

The rights and remedies of JEK Software Support Ltd. under this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by JEK Software Support Ltd nor by any failure of or delay by JEK Software Support Ltd in asserting or exercising any such rights or remedies.

15. FORCE MAJEURE

If the Company is hindered or prevented (whether temporarily or permanently) from procuring supplies to enable it to supply Services or if such supply is prevented or hindered by reason, without limitation, of Act of God, war, Act of Parliament, or orders, regulations or bye laws made under statutory authority, labour disputes including JEK Software Support Ltd.'s labour force, interruption of power supply, failure of sources of supply, interference by a third party, civil commotion, fire, flood or other natural disaster, or any causes of whatever kind and whenever occurring being a cause beyond JEK Software Support Ltd.'s control, (circumstances of Force Majeure), then JEK Software

Support Ltd. may cancel performance of the contract for as long as and to the extent that the prevention or hindrance may last and such cancellation shall not give rise to any claims by the Client, and the Client shall remain liable to pay for the Services delivered prior to the date of such cancellation.

16. SEVERANCE AND SAVING OF RIGHTS

Should any provision of the Terms & Conditions for the supply of Services prove to be illegal or unenforceable, such provision shall be deemed severable to the extent of such illegality or unenforceability and the remaining provisions thereof shall continue in full force and effect.

That failure by JEK Software Support Ltd at any time to fully enforce any Terms & Conditions of the contract for the sale and supply of Services or to exercise any rights hereunder shall not constitute a waiver of such Terms & Conditions nor shall it affect JEK Software Support Ltd's right to enforce them.

17. LAW AND JURISDICTION

These conditions and each and every contract shall be subject to and interpreted in accordance with English law and all parties agree to accept the non-exclusive jurisdiction of the English Courts. Such submissions shall not limit nor be construed as limiting JEK Software Support Ltd's rights to take proceedings against the Client in connection with this contract in any court of competent jurisdiction nor shall the taking of proceedings in any one or more courts preclude the taking of proceedings in any other jurisdiction.

18. NOTICES

Notices may be given by either or both JEK Software Support Ltd and the Client by sending such notices to the last known business address or the Registered Office of the other party. Such notices shall be in writing and sent by *First Class Post* Fax *e-mail.