



Aspire Technology Solutions
Standard Terms & Conditions

These terms and conditions apply to the sale, licence and maintenance (as applicable) by ASPIRE Technology Solutions of any computer hardware or software or other similar or associated items or materials. These terms are divided into five parts; Sales, RealCARE Maintenance, Private Circuits, Data Centre Services and General. The general terms apply to all contracts of ASPIRE. The remaining terms apply depending upon the service to be provided by ASPIRE.

Part 1 – Sale of Goods

The following terms and conditions in this Part 1 apply to the sale of goods by ASPIRE.

1. Formation of Contract

1.1 ASPIRE will sell and the Customer will buy the Goods in accordance with ASPIRE's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by ASPIRE) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by ASPIRE unless ASPIRE confirm this in writing.

2. Accuracy of Order

2.1 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer.

3. Software

- 3.1 All software, whether supplied, installed or implemented is provided within the terms and conditions and licence of the software provider.
- 3.2 If the software comprised in the Goods is not owned by ASPIRE then the Customer will be required to enter into an end-user licence agreement with the owner of the software concerned.
- 3.3 If any software has to any extent been written or developed by ASPIRE then subject to clause 3.2 above, ASPIRE hereby grants a non-exclusive, non-transferable licence for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of ASPIRE and notwithstanding clause 5.1 no title or ownership thereof will be transferred to the Customer.

4. Delivery

- 4.1 Delivery of the Goods will take place by ASPIRE delivering the Goods to the place agreed in writing with the Customer.
- 4.2 Any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the contract. ASPIRE will not be liable for any loss or damage (howsoever arising) to the Customer should ASPIRE be unable to deliver the Goods within the quoted period.
- 4.3 ASPIRE is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.
- 4.4 If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by ASPIRE to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.

5. Transfer of Property and Risk

- 5.1 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until ASPIRE has received payment in full of the price of the Goods and all other goods agreed to be sold or services to be provided by ASPIRE to the Customer for which payment is then due.
- 5.2 Until title in the Goods has passed to the Customer, ASPIRE will be entitled at any time to require the Customer to deliver up the Goods to ASPIRE and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 5.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as ASPIRE's fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as ASPIRE's property.

6. Installation

6.1 Where ASPIRE's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by ASPIRE) specifies installation of the Goods or ASPIRE otherwise undertakes any such installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure and suitable electrical supply. If ASPIRE is prevented or delayed from carrying out the installation through no fault of ASPIRE then ASPIRE is entitled to charge the Customer at ASPIRE's

then current prices for any additional works carried out by or on behalf of ASPIRE to enable it to complete the installation and/or for compensation for any losses or costs incurred by ASPIRE by reason of such delay.

7. Warranty

- 7.1 The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 90 days from the date of delivery by ASPIRE. The Customer must within the said period of 90 days notify ASPIRE in writing of any such defects and permit ASPIRE to inspect the Goods as required by ASPIRE. If the Customer does not so notify then the Customer will not be entitled to reject the Goods and ASPIRE will have no liability for such defect.
- 7.2 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by ASPIRE and does not apply to any Goods that have been repaired or modified by anybody other than ASPIRE.
- 7.3 If a valid claim is notified under clause 7.2 above then ASPIRE may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part) in which case ASPIRE will have no further liability to the Customer.

Part 2 – Provision of RealCARE IT Support Services

The following terms and conditions apply to the maintenance service described within the Service Provider Agreement for RealCARE IT Support to be provided for the Equipment specified in the Service Provider Agreement for RealCARE IT Support.

1. ASPIRE Responsibilities

- 1.1 ASPIRE will, subject to these Terms, provide the RealCARE maintenance in accordance with the Service Provider Agreement.
- 1.2 ASPIRE will use its reasonable endeavours to respond to a valid Call within the response time set out in the written IT Support Services proposal.
- 1.3 ASPIRE will use its reasonable endeavours to rectify defects or malfunctions in the Equipment on the telephone or by use of remote access where provided by the Customer.
- 1.4 If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, ASPIRE will use its reasonable endeavours to visit the Installation Address within the response times published.
- 1.5 When carrying out work in accordance with these Terms, ASPIRE will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer's applications.
- 1.6 ASPIRE may at its discretion provide a permanent replacement part for the Equipment, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of ASPIRE.
- 1.7 ASPIRE may repair the Equipment away from the Installation Address when it considers it necessary to do so.
- 1.8 ASPIRE may at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Equipment loaned to the Customer remains ASPIRE's property and will be returned to ASPIRE on demand. The Customer is entirely responsible for such equipment and will indemnify ASPIRE in respect of any loss or damage to that equipment.
- 1.9 ASPIRE may make use of new releases, patches and updates of Third Party Software to rectify known problems where this is permitted under the applicable software licence agreement.
- 1.10 Where ASPIRE is required to carry out or does carry out work that is subsequently found to be outside RealCARE Maintenance, ASPIRE will be entitled to charge for that work at ASPIRE's then current rates.

2. Term

2.1 RealCARE Maintenance will commence on the date set out in the Service Provider Agreement and, subject to these Terms, continue unless and until either party serves at least one month's prior written notice of termination on the other expiring on the date of expiry of the Initial Term or any anniversary thereafter.

3. Period of Availability

- 3.1 ASPIRE will only provide RealCARE Maintenance during the Scheduled Service Hours. If the Customer requests ASPIRE to carry out any RealCARE Maintenance outside the Scheduled Service Hours then, ASPIRE will use its reasonable endeavours to comply with this request but will charge the Customer for such services at ASPIRE's then current rates.
- 3.2 The time taken by ASPIRE to respond to a Call will only be measured during the Scheduled Service Hours.

4. Customer Responsibilities

- 4.1 The Customer will keep the Equipment in the environmental conditions recommended by the Equipment manufacturer and ensure that the external surfaces, cables and fittings of the Equipment are kept clean and in good condition.
- 4.2 The Customer will ensure that the Equipment is only used by properly trained staff in accordance with the manufacturer's user instructions, current computing practice and instructions issued by ASPIRE from time to time.
- 4.3 The Customer will ensure that only personnel authorised by ASPIRE adjust, modify, configure, maintain, repair, replace or remove any part of the Equipment.
- 4.4 The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide ASPIRE with such information and assistance concerning the Equipment, its application, use, location and environment as ASPIRE may reasonably require to enable it to carry out the RealCARE Maintenance.
- 4.5 The Customer will immediately notify ASPIRE if there is any failure of the Equipment and will allow ASPIRE full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the RealCARE Maintenance.
- 4.6 The Customer will ensure that relevant trained and experienced staff are available when required by ASPIRE to provide ASPIRE with information required by ASPIRE to diagnose and/or repair the Equipment.
- 4.7 Where ASPIRE provides remote diagnostic services in respect of the Equipment, the Customer will put and keep in place a remote access link to the Equipment which is acceptable to ASPIRE.
- 4.8 The Customer must tell ASPIRE in writing immediately that the Equipment or any part of it is changed.
- 4.9 The Customer will notify ASPIRE of change in the location of any part of the Equipment. Whilst any Equipment is being moved, all ASPIRE's obligations to provide the RealCARE Maintenance will be suspended. The RealCARE Maintenance will be reinstated following re-installation of the Equipment provided that the Equipment has not been damaged or affected during the move.
- 4.11 Unless specifically included in the Service Provider Agreement, the Customer is responsible for the cost of any Third Party Software upgrades which ASPIRE advise are required.
- 4.12 It is the Customer's sole responsibility, in a manner acceptable to ASPIRE, to operate and verify a proper back up routine, maintaining all backup copies in a secure environment such that they can and will be provided to ASPIRE when required.
- 4.13 The Customer undertakes to put and keep in place adequate security measures to protect the Equipment and any other software or data from viruses, harmful code or unauthorised access.
- 4.14 The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Equipment.

5. System Audit

- 5.1 ASPIRE will, as often as ASPIRE thinks necessary and (save in the event of an emergency) upon reasonable notice carry out a System Audit within ASPIRE's Normal Working Hours to confirm that, in ASPIRE's opinion, the Equipment is in reasonable operating condition.

6. Service Exclusions

- 6.1 The RealCARE Maintenance does not extend to:
 - 6.1.1 any Equipment not specified or included in the Service Provider Agreement including any part of the Equipment which is in any way changed from that included in the Service Provider Agreement;
 - 6.1.2 any Equipment which was, in ASPIRE's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of the RealCARE Maintenance;
 - 6.1.3 any work arising as a result of any breach by the Customer of any of its obligations under these Terms;
 - 6.1.4 any work arising from any incident, wilful act or any error or omission in the operation of the Equipment or any other cause (except for wear and tear) which is not due to the neglect or default of ASPIRE;
 - 6.1.5 any failure or defect caused by hardware or software not covered by these Terms;
 - 6.1.6 failures or defects due to manufacture or design defects over which ASPIRE has no control;

- 6.1.7 refurbishment or repair of casings or outer surfaces;
- 6.1.8 any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Service Provider Agreement;
- 6.1.9 reinstatement of customised versions of the standard desktop operating system;
- 6.1.10 reinstatement of the Customer's software and data not identified within the Service Provider Agreement;
- 6.1.11 any consultancy, training or software or hardware ASPIRE may provide;
- 6.1.12 integration of the Equipment or any part thereof with other systems;
- 6.1.13 cleansing of viruses and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software.
- 6.1.14 upgrading the Operating Platform to be able to operate the Customer's selected software applications;
- 6.1.15 consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the Scope of Service;
- 6.1.16 any Equipment in respect of which a notice has been served by ASPIRE under clauses 8 or 9;
- 6.1.17 any work arising by reason of any maintenance or repair work carried out in respect of the Equipment by a third party not previously approved in writing by ASPIRE;

7. Beyond Reasonable Repair

- 7.1 ASPIRE will give the Customer written notice if, in its reasonable opinion, the Equipment (or any part of it) is identified as "end of life", becomes beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary at which point any obligations of ASPIRE to provide the RealCARE Maintenance in respect of such equipment will be suspended. If the Customer declines to have the Equipment overhauled or replaced at its expense within thirty days of such notification, ASPIRE may on written notice exclude such equipment from this Contract and refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period and will remove any loan equipment relating to the said equipment from the end of the notice period.
- 7.2 The provisions of clause 8.1 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of ASPIRE, is no longer economically viable to maintain or requires upgrading or updating.

8. Pre Inspection

- 8.1 Prior to commencement of the RealCARE Maintenance, ASPIRE may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address to confirm that it is, in ASPIRE's reasonable opinion, in full working order in accordance with the manufacturer's requirements. If work is required to put the Equipment in such full working order ASPIRE will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, ASPIRE may on written notice exclude such equipment from RealCARE Maintenance and will refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

Part 3 – Private Circuits

1. Special Definitions & Interpretation

- 1.1 In these Special Terms, defined terms shall have the meaning given in ASPIRE's General Terms and Conditions.
- 1.2 In addition to the definitions contained in ASPIRE's General Terms and Conditions:

"Connection Charges" means the charges payable for installation and connection of the Equipment and Service specified in the Price Guide or as otherwise agreed in writing (and in either case whether referred to as "Connection Charges" or otherwise).

"Rental" means the rental payable by the Customer to ASPIRE specified in the Price Guide or as otherwise agreed in writing (and in either case whether referred to as "Rental" or otherwise).

"Service" means Managed Internet Access Service provided by ASPIRE as set out on the relevant Order Form.

"Special Terms" means these additional terms and conditions relating to the provision of ASPIRE's Private Circuits Services.

“ASPIRE’s General Terms and Conditions” means ASPIRE’s general terms and conditions applicable to the Service.

2. Payment of Charges

- 2.1 Rental shall be invoiced annually in advance from the Service Commencement Date. If you wish rental billing to be on a quarterly or monthly basis, ASPIRE standard surcharges will apply.
- 2.2 The Connection Charge shall be invoiced on or around the Service Commencement Date or such other date as ASPIRE shall notify You.
- 2.3 Any other Charges shall be invoiced as set out in the Price Guide or as otherwise agreed in writing.

3. Early Termination

- 3.1 If You cancel or without cause terminate the Agreement prior to expiry of the Minimum Period, no refunds of any Charges paid in advance shall be made by ASPIRE. Furthermore, ASPIRE shall invoice You and You shall pay ASPIRE:
 - a) any Charges due but unpaid at such date of cancellation or termination; and
 - b) ASPIRE’s reasonable costs incurred in the removal and storage of the Equipment; and
 - c) an amount equal to the Rental payable for the Minimum Period LESS the amount of Rental already paid by You; and
 - d) any other cancellation or termination charges referred to in the Price Guide or as otherwise agreed by the Parties in writing.

Part 4 – Data Centre Services

1. Data Centre Services

- 1.1 Data Centre Services consist of data access to the Data Centre on the ASPIRE Network, data storage in the Data Centre, and management services in maintaining and operating the Data Centre.

2. ASPIRE’s Data Centre

- 2.1 The Data Centre will have power, backup emergency power, and cooling for all components physically located within it, but no guarantee is made or implied with respect to uninterrupted operations.
- 2.2 Physical access to the Data Centre will be controlled on behalf of ASPIRE. Except as otherwise stated, Customers will generally not have physical access to the Data Centre, but customers may request such access from ASPIRE (which may be granted or denied in ASPIRE’s discretion) not less than 2 days prior to the desired access.

3. Service Changes

- 3.1 ASPIRE reserves the right to have Service Changes made from time to time, and ASPIRE will endeavour to notify customers at least 30 days before any Service Change. If, however, a shorter notification period is necessary in ASPIRE’s reasonable judgment, then any such Service Changes may nevertheless be made with such prior notification to customers as is practical and reasonable under the circumstances.
- 3.2 ASPIRE will attempt to have minimized any service unavailability that may be caused by or required by any Service Change, but if an outage is required, the outage will be considered a Planned Downtime.

4. Customer Obligations

- 4.1 Each customer is responsible for not allowing any circumvention or other interference with all reasonable security precautions relating to the Data Centre Services.
- 4.2 Each customer must provide ASPIRE with prior notification of any change in configuration that could interfere with the Data Centre Services, and if necessary (and upon ASPIRE’s request), will provide a qualified, knowledgeable representative to be physically present at the Data Centre.

5. Data Centre Availability

- 5.1 The Data Centre Services will be available at all times, other than during Planned Downtimes and during times when the Data Centre Services are affected by Extenuating Circumstances.

6. Reporting Data Centre Services Unavailability

- 6.1 When a customer experiences unavailability of the Data Centre Services, and the customer believes that the fault is not in or due to its own network, internet service provider or other system host, then the customer must open a Service Ticket by reporting the Data Centre Services Unavailability to ASPIRE by email to helpdesk@aspirets.com or by telephone to 0845 643 9200 within 24 hours of its occurrence. If a Service Ticket is not opened as provided in this Section, then the customer will not be entitled to any Service Credit or any other remedy

from ASPIRE. ASPIRE will discuss the issue with the customer, and try to resolve it immediately, but if immediate resolution is not possible, ASPIRE will assign a Service Ticket number to the issue and begin an investigation in order to resolve the issue.

7. Service Credits

- 7.1 Any ASPIRE customer who experiences a Data Centre Services unavailability or whose requests relating to Data Centre Services are not acknowledged or acted upon within the time limits set is entitled to a Service Credit but no more than 1 Service Credit may be obtained by any customer for any single calendar day (regardless of the extent of Data Centre Services unavailability or non-acknowledged or non-acted upon requests), and the aggregate of all Service Credits obtained by any customer may not exceed 50% of the average monthly service charges for Data Centre Services for the prior 3 months.
- 7.2 Any Service Credit requested and granted by ASPIRE will thereafter be applied to the customer’s prospective recurring service charges for the Data Centre Services. Service Credits constitute the sole and exclusive remedy relating to Data Centre Services for all ASPIRE customers.

8. Requesting a Service Credit

- 8.1 Any customer who wishes a Service Credit based upon the performance standards set must request it by notifying the ASPIRE Helpdesk within 5 business days of the occurrence. This notice must be sent by email to ASPIRE at Helpdesk@aspirets.com, and must include sufficient information to allow the claim to be investigated, including, without limitation, as may be the case, the Service Ticket number and the customer request and the date and time such request was made to ASPIRE and the manner such request was made. If the customer does not report such failure as provided in this section, then the customer will not be entitled to any Service Credit or any other remedy from ASPIRE. ASPIRE will notify the customer of its decision about a credit, and its decision is final.

9. Definitions

“Business Days” means Monday through Friday, excluding national holidays.

“Data Centre” means the centralised repository or repositories for the storage, management, and dissemination of data and information and the supporting components of that data and information that ASPIRE provides its customers.

“Data Centre Services Unavailability” means any time when the Data Centre Services are unavailable to the customer, but does not include Planned Downtimes and times when the Data Centre Services are unavailable or otherwise affected by Extenuating Circumstances.

“Extenuating Circumstances” means:

- (i) the acts or omissions of the customer or any other end-user;
- (ii) the behaviour of the customer’s equipment, facilities, or applications;
- (iii) faults in or failures of the customer’s equipment, network, email servers, computers, or software;
- (iv) faults or failures caused by the customer’s internet server provider or any other third parties that host the customer’s email delivery systems or web sites, including network outages (to other than the ASPIRE Network);
- (v) external causes, such as vandalism, theft, etc., including non-published and vicious virus attacks on software;
- (vi) acts of God, Force Majeure, or any other situations beyond the control of ASPIRE; and
- (vii) a customer’s circumvention or other interference with the reasonable security precaution relating to the Data Centre.

“Planned Downtime” means any time when the Data Centre Services are unavailable because of:

- (i) Service Changes,
- (ii) Urgent Maintenance Activities, and
- (iii) any other scheduled maintenance or upgrade activities that may or may not be periodic, and that may be notified to customers at least 36 hours in advance.

“Point of Demarcation” means the physical point at which the ASPIRE Network ends and the private network of a customer begins.

“Service Change” means any change in the Data Centre Services or in the manner they are provided.

“Service Credit” means 1/30th of the customer’s average monthly service charge for Data Centre Services for the preceding three months.

“ASPIRE Network” means the physical communications infrastructure and supporting hardware, software and firmware owned, managed or operated by ASPIRE and providing the related ASPIRE service(s) to a customer’s Point of Demarcation(s). It does not include customers’ equipment, telephone circuits provided by telephone companies or other common carriers, any external Internet service provider or an Internet exchange point, or any networks or network equipment not owned or controlled by or on behalf of ASPIRE.

“Service Ticket” means the notification by a customer of a perceived Data Services Unavailability.

“Urgent Maintenance Activities” are maintenance activities required by applications or systems that cannot, in ASPIRE’s sole judgment, be postponed until the next available or convenient maintenance window, and may include, but are not limited to, restarting applications, rebooting servers, applying patches or fixes, reconfiguring storage allocations, reloading data, and making DNS or firewall changes to close security holes. ASPIRE will endeavour to provide customers as much notice of Urgent Maintenance Activities as is possible under the circumstances, but ASPIRE may undertake Urgent Maintenance Activities without advance notice to customers.

10. Communications and Notifications

10.1 For general enquiries, billing enquiries, engineering support about the Data Centre Services, to report Email Processing Service Outages and to open a Service Ticket, customers should contact the ASPIRE Helpdesk 24 hours per day, seven days per week, at 0845 643 9200, or by email at Helpdesk@aspirets.com. All requests for Service Credits must be made by email to ASPIRE at Helpdesk@aspirets.com.

Part 5 - General Provisions

The following terms and conditions apply to all Equipment sold or to be sold and/or Software licensed or to be licensed and/or RealCARE Maintenance provided or to be provided to the Customer.

1. General

- 1.1 These Terms may only be amended, or varied with ASPIRE’s agreement in writing. The parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any orders or other notifications submitted by the Customer.
- 1.2 Words of a technical nature used in these Terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.
- 1.3 Headings in these Terms are for convenience only and have no effect on the interpretation.
- 1.4 Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under these Terms or otherwise nor will any single or partial exercise thereof preclude any further or subsequent exercise.

2. Specification

- 2.1 The description of any Goods contained in any invoice, order form, descriptive matter, specifications, catalogue or advertising material published or issued by ASPIRE is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by ASPIRE may be corrected by ASPIRE without any liability on the part of ASPIRE.
- 2.2 ASPIRE reserve the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of the RealCARE Maintenance provided that this does not materially affect the performance of the Goods or the RealCARE Maintenance.

3. Prices

- 3.1 Unless otherwise stated in writing, quotations are valid for 30 days from the date of issue and are exclusive of VAT and any other relevant taxes which are payable by the Customer in addition.
- 3.2 The Charges quoted in the Service Provider Agreement for RealCARE Maintenance are for the Initial Term only. The annual Charges payable for any subsequent 12 month period (excluding any additional payments due under these Terms) will be as notified by ASPIRE to the Customer in writing at least 45 days before the commencement of such period.
- 3.3 All waiting time spent by any employees or agents of ASPIRE (which includes any time which had been allocated to a Customer by ASPIRE and which is not utilised by such Customer for any of the reasons set out in this clause) as a result of any delay, variation or failure by the Customer to comply with these Terms (which for these purposes includes any delays or postponements by the Customer of any installation dates specified by ASPIRE, of dates of scheduled service visits or otherwise) will

be payable by the Customer to ASPIRE at ASPIRE’s then applicable hourly rate.

4. Payment

- 4.1 In respect of the RealCARE Maintenance for the Initial Term the Customer will pay the Charges to ASPIRE on the date(s) set out in the Service Provider Agreement.
- 4.2 In respect of the sale of all other Goods and services:
 - 4.2.1 Payment will be made by the Customer on the date(s) agreed in writing between the Customer and ASPIRE at the point of order for the Goods or the requirement for services in accordance with these Terms.
 - 4.2.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required ASPIRE may invoice the Customer at any time after the Goods become available.
 - 4.2.3 ASPIRE may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.
 - 4.2.4 Any quantity discount given by ASPIRE at the point of order may be removed if the order quantity is subsequently reduced.
- 4.3 If no payment date(s) has been agreed in writing in accordance with clauses 4.1 or 4.2.1 above then payment by the Customer will be made within 30 days after the date of ASPIRE’s invoice.
- 4.4 If any payments from the Customer under these Terms are payable by instalments, the Customer will pay such instalments in advance, by standing order, direct debit or such other method as ASPIRE may agree, at the intervals agreed in writing with ASPIRE.
- 4.5 If the Customer fails to make any payment due to ASPIRE (whether under these Terms or otherwise) on its due date then ASPIRE may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by ASPIRE to the Customer or appropriate any money received from the Customer against such sums as ASPIRE may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, ASPIRE will be entitled to suspend the performance of any RealCARE Maintenance in the event that there are any sums owing by the Customer in respect of any other goods and/or services provided by or on behalf of ASPIRE to the Customer.
- 4.6 All payments due to ASPIRE under these Terms will be paid in full without any set off, deduction, counterclaim or withholding of any sum for whatever reason.
- 4.7 ASPIRE reserves the right to charge interest on the amount of any delayed payment at the rate of 4% over the base rate of Lloyds TSB Bank Plc from time to time per calendar month or part thereof on the outstanding amount until payment has been made in full.

5. Lease

- 5.1 If any payments due to ASPIRE in respect of the Goods or the RealCARE Maintenance is to be paid by a third party then the Customer agrees that immediately on delivery of the Goods the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as may be necessary to ensure that payment is made to ASPIRE for the Goods and/or the RealCARE Maintenance in accordance with these Terms.

6. ASPIRE Employees

- 6.1 The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of ASPIRE’s representatives who visit any premises of or on behalf of the Customer;
- 6.2 The Customer will fully indemnify and hold harmless ASPIRE from and against any claim for loss, damage or injury to any person or property occasioned by or arising directly or indirectly from any negligence or misuse of the Goods or the Equipment or any other breach of these Terms by or on behalf of the Customer.

7. Liability

- 7.1 Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of ASPIRE for any fraudulent misrepresentation.
- 7.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.
- 7.3 The Customer accepts that in respect of the sale of the Goods, whilst ASPIRE will endeavour to use its expertise and experience to advise the Customer, ASPIRE is acting as a supplier only and it is the Customer’s responsibility to ensure that the Goods will be suitable for its requirements and the Customer acknowledges that prior to the Contract

it has fully and accurately advised ASPIRE of its requirements, both present and anticipated, in respect of the Goods.

- 7.4 If ASPIRE is unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect then, the Customer's only remedy is to reject such Goods and on their return to ASPIRE's premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms,
- 7.5 Without prejudice to clause 7.7, if ASPIRE fails to provide RealCARE Maintenance in accordance with its obligations hereunder, the total Liability of ASPIRE in any one year for any Loss suffered by the Customer as a result of such failure will not exceed the Charges paid by the Customer in such year for the RealCARE Maintenance in question.
- 7.6 Except in the case of death or personal injury caused by ASPIRE's negligence, or liability for defective products under the Consumer Protection Act 1987, ASPIRE will not have any Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services even if ASPIRE had been advised of the possibility of such potential loss.
- 7.7 Except in the case of death or personal injury caused by ASPIRE's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall ASPIRE's Liability in respect of any Loss to the Customer exceed £50,000.00.
- 7.8 Except in the case of death or personal injury caused by ASPIRE's negligence, or liability for defective products under the Consumer Protection Act 1987, no action regardless of form may be brought by the Customer more than 12 months after the cause of action has accrued.
- 7.9 ASPIRE will have no liability under these Terms or otherwise to the Customer arising out of:
- 7.9.1 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its operating system software, application software, data files and other documentation;
- 7.9.2 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of ASPIRE in accordance with these Terms or any other reason;
- 7.9.3 any act or omission of any third party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facility in respect of the Equipment); and if any damage to any of the program or data files of the Customer occurs then ASPIRE's responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on site assistance is required to reconstruct the files then ASPIRE will charge the Customer for the cost of such assistance at ASPIRE's then current rates.

8. Warranties

- 8.1 The Customer warrants and represents that the use by ASPIRE of any data, materials or equipment supplied by the Customer for use by ASPIRE in the provision of the RealCARE Maintenance, will not infringe the intellectual property rights of any third party and the Customer will fully indemnify ASPIRE in this respect.

9. Confidentiality

- 9.1 Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer.

10. Performance

- 10.1 ASPIRE will not be liable for any failure or delay in complying with these Terms if the failure or delay was due to force majeure, including any circumstances whatsoever beyond the reasonable control of ASPIRE in which event ASPIRE will as soon as reasonably practicable notify the Customer of the nature and extent of the circumstances in question. If the force majeure continues for more than 30 days then ASPIRE may cancel this Contract (or any part thereof) without liability to the Customer.

11. Sub-Contracts

- 11.1 ASPIRE may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time. ASPIRE is a member of a group of companies and accordingly ASPIRE may perform any of its obligations or exercise any of its rights under this Contract through any member of its group.
- 11.2 The Customer acknowledges that this Contract is personal to the Customer and that it may not assign or in any way make over to any third party, whether in whole or in part, the benefit of, and/or its obligations under this Contract without the prior written authority of ASPIRE and on such terms as ASPIRE may reasonably require.
- 11.3 Save where expressly stated in these Terms, no person will become entitled to enforce any of its provisions of these Terms who would not have been so entitled but for the provisions of the Contracts (Rights of Third Parties) Act 1999, the provisions of which do not apply to these Terms.

12. Termination

- 12.1 ASPIRE may without prejudice to any other remedy available to it at any time by giving written notice terminate or suspend this Contract or such part of it as ASPIRE may elect (including stopping any Goods in transit) if:
- 12.1.1 the Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within thirty days of a written notice detailing the breach;
- 12.1.2 a resolution is passed or an order is made for the liquidation of or the winding up of the Customer (save for the purpose of a bona fide reconstruction or amalgamation);
- 12.1.3 the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets;
- 12.1.4 the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;
- 12.1.5 the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;
- 12.1.6 the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;
- 12.1.7 in the case of a sole trader or partnership anything analogous to any of the above occurs.
- 12.2 On termination of this Contract for any reason the Customer will return or delete any of ASPIRE's Confidential Information and return to ASPIRE all property of ASPIRE under the Customer's possession or control.
- 12.3 On termination of the Contract any licence to use software granted by ASPIRE will immediately terminate and the Customer will return to ASPIRE any such software and all copies thereof and will not use or permit the use of any such software. The Customer acknowledges and agrees that ASPIRE will be entitled to remove such software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.
- 12.4 If the Customer terminates this Contract (or ASPIRE terminates by reason of any acts or omissions of the Customer) then
- 12.4.1 in respect of any Goods such termination can only be made with ASPIRE's written consent and on terms that the Customer will indemnify ASPIRE in full against all loss (including loss of profit) costs, charges and expenses incurred by ASPIRE as a result of such termination; and
- 12.4.2 in respect of the RealCARE Maintenance if the termination occurs prior to the end of the Initial Term, ASPIRE may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as ASPIRE has reasonably incurred in equipping itself to deliver the RealCARE Maintenance and which have not been fully recovered by ASPIRE from the Charges paid by the Customer at the date of termination.

13. Data Protection

- 13.1 Each party will ensure that in the performance of its obligations under these Terms it will at all times comply with the Data Protection Act 1998.
- 13.2 The Customer consents to the processing by ASPIRE of all the Customer's personal data (as the term 'personal data' is defined in the Data Protection Act 1998) for all purposes connected with these Terms.
- 13.3 The Customer acknowledges that any data transmitted over the Internet cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that ASPIRE has no liability for the loss, corruption or interception of any such data.

14. Non Solicitation

- 14.1 The Customer acknowledges the investment made by ASPIRE in the training of ASPIRE's Personnel and the commercial interest which ASPIRE has in retaining their services.
- 14.2 The Customer agrees that if any of the ASPIRE Personnel who have provided all or any part of any services for or on behalf of ASPIRE to the Customer within 3 months of leaving the employment or engagement of ASPIRE accepts an Engagement with the Customer then the Customer will pay to ASPIRE such sum as represents 30% of the anticipated annual salary or other sums to be paid by the Customer to such person(s) within the first year of such Engagement.
- 14.3 For the purpose of this clause 14 references to the Customer will include any person or entity to whom such person(s) is introduced (directly or indirectly) by the Customer.

15. Notices

- 15.1 All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

16. Law and Jurisdiction

- 16.1 These Terms will be governed by and construed in accordance with English Law and the English Courts will have non-exclusive jurisdiction to hear all disputes arising in connection with these Terms.
- 16.2 The invalidity or unenforceability for whatever reason will not prejudice the continuation in force of the remainder of these Terms and if any part of these Terms is held by a Court or other competent authority to be illegal or ineffective it or they will be replaced with such legal and effective terms that most closely approach the ineffective terms.

17. Entire Agreement

- 17.1 These Terms and the Scope of Service contains the entire agreement between the parties with respect to their subject matter and supersede all previous written and oral agreements and understandings between the parties. The Customer acknowledges that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision except as expressly set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of ASPIRE for any fraudulent misrepresentation.

Definitions

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

Call

Communication received by ASPIRE from the Customer reporting a defect or malfunction in the Equipment.

Charges

The sums payable by the Customer to ASPIRE for the RealCARE Maintenance, as set out in the Service Provider Agreement.

Confidential Information

Any trade secrets or confidential or proprietary information of either party, including these Terms, but excluding any information:

- (a) in the public domain otherwise than by a breach of the Contract;
- (b) which, prior to disclosure, was already known by the recipient;
- (c) that the other party develops independently of or to any information that is disclosed to it under the provisions of the Contract; or
- (d) which is subsequently disclosed to the recipient by a third party at liberty to disclose it.

Customer

The person who accepts ASPIRE's written quotation for the sale of the Goods and/or the supply of the RealCARE Maintenance or whose written order in respect thereof is accepted by ASPIRE.

Engagement

The employment, hire or other use, directly or indirectly and whether as an employee or on a self-employed basis.

Equipment

All or part of the network, hardware, software and Third Party Software as specified or identified in the Service Provider Agreement.

Goods

The computer hardware, software and related equipment which ASPIRE is to supply in accordance with these Terms.

Initial Term

The fixed period for which the RealCARE Maintenance is to be provided as specified in the Service Provider Agreement.

Installation Address

The address specified in the Service Provider Agreement at which the Equipment is located or such other address as may be agreed in writing by ASPIRE.

Liability

Any liability arising by reason of any representation (unless fraudulent), or any breach of any implied warranty, conditions or other term or any duty at common law, or under any statute, or under any express term of this Contract.

Loss

In relation to the Customer means loss of profit (or any other loss), damages, costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, howsoever arising and whether by reason of negligence of ASPIRE, its employees, its agents or otherwise.

Normal working hours

09:00 to 17:00 Monday to Friday but excluding bank or statutory holidays.

Operating Platform

The complete configuration of hardware, ancillaries/accessories and operating system for an item of Equipment.

Personnel

Any employee, agent, consultant and/or sub-contractor of the party concerned.

RealCARE Maintenance

The provision of a maintenance service for the Equipment together with proactive support visits as set out in the Service Provider Agreement.

Scheduled Service Hours

The times during which ASPIRE will endeavour to provide the RealCARE Maintenance as specified on the Service Provider Agreement.

Service Provider Agreement

The contract between the Customer and ASPIRE for the sale of Goods and/or the RealCARE Maintenance in accordance with these Terms.

System Audit

Means an inspection of the Equipment or part thereof but does not include repair or replacement.

Third Party Software

Software developed and licensed by a third party, for which ASPIRE have agreed to provide support, as detailed in the Service Provider Agreement.



Aspire Technology Solutions

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