



## Welcome Systems Sales & Licensing - Terms and Conditions

### 1. DEFINITIONS

“Welcome” means WELCOME SYSTEMS LIMITED;

“the Contract” means the contract formed by these terms and conditions and the sales order confirmation form;

“the Customer” means the party with whom Welcome is contracting;

“Deliverables” means the Licensed Software (including Software as a Service (“SaaS”)), Hardware, Third Party Software, consultancy, installation and training as agreed to be provided by Welcome to the Customer and set out on the sales order confirmation form;

“Designated Equipment” means such computers, cabling, printers and peripherals, network equipment and systems, or other items necessary to execute the Licensed Software as specified in the sales order confirmation form;

“Documents” means the operating manual, user instructions, technical literature and other documentation supplied to the Customer by Welcome for aiding the use of the Licensed Software;

“Hardware” means any Designated Equipment supplied to the Customer by Welcome;

“Intellectual Property Rights” means Welcome's, or any third party licensor's patents, trademarks, registered or unregistered trade marks, copyright, know-how, confidential information and other protected rights in the Software;

“Licensed Software” means the version of Welcome's software program in executable form specified in the sales order confirmation form;

“Purchase Price” means the price of the Deliverables stated on the sales order confirmation form;

“the Site” means the address for delivery of the Deliverables as set out in the sales order confirmation form; and

“Third Party Software” means software owned by a third party but supplied by Welcome pursuant to these terms and conditions.

### 2. PRODUCTS AND SERVICES TO BE SUPPLIED

Welcome agrees to:

2.1 deliver the Deliverables to the Customer;

2.2 install the Licensed Software and the Third Party Software (if any) on the Designated Equipment (if applicable);

2.3 license the Customer to use the Licensed Software;

2.4 train the Customer to use the Licensed Software (if applicable) all upon these terms and conditions.

### **3. ORDERS**

3.1 All quotations are made and orders accepted subject to these terms and conditions and these terms and conditions constitute our standard terms upon which we intend to rely. For your own benefit and protection you should read these terms and conditions carefully and, if you do not accept that these terms and conditions prevail, you must contact us by telephone and inform a Welcome manager, before you place your order, that you do not intend to be bound by these terms and conditions.

3.2 These terms and conditions shall prevail over the Customer's terms and conditions.

3.3 No variation to these terms and conditions shall be binding unless agreed in writing by a Welcome manager.

3.4 No order submitted by a Customer shall be deemed to be accepted by Welcome unless and until confirmed by way of Welcome's sales order confirmation form.

3.5 The quantity, quality and description and any specification for the Deliverables shall be those set out or referred to on the sales order confirmation form.

3.6 Any typographical or clerical omission in any sales literature, quotation, price list, sales order confirmation form or other document issued by Welcome shall be subject to correction without any liability on the part of Welcome.

### **4. CANCELLATION**

The Customer shall not be entitled to amend or cancel any order placed with Welcome except with Welcome's written consent and on payment of a sum equal to the losses (including loss of profit), costs, damages and expenses suffered or incurred by Welcome either directly or indirectly as a result of such amendment or cancellation.

### **5. PRICES**

All Purchase Prices are quoted in pounds sterling and unless otherwise stated exclude Value Added Tax which the Customer shall be additionally liable to pay for.

### **6. TERMS OF PAYMENT**

6.1 Payment for the Deliverables shall be made as follows: A non-refundable deposit of an agreed proportion of the total Purchase Price is required upon placing the order; the balance of the total Purchase Price and all other charges are payable within 30 days of completion of installation.

6.2 For overseas sales, payment is to be made in accordance with the terms set out in the Sales Order Confirmation Form.

6.3 Welcome reserves the right to charge interest and penalties in respect of the late payment of any sum due at the rates and other terms prescribed from time to time in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 both before and after judgement the Customer shall indemnify Welcome against all costs and expenses (including legal costs on a full indemnity basis) incurred or sustained by Welcome in recovering such sums.

6.4 In addition to Welcome's rights under clause 6.3, Welcome shall be entitled, at its discretion, to disable functionality of the whole or any part of the Deliverables until such time as the charges arising under this agreement have been paid in full.

Welcome's rights under this clause 6.3 are without prejudice to any other rights available to Welcome whether arising under this agreement or otherwise.

## **7. DESPATCH AND DELIVERY**

7.1 Welcome shall use all reasonable endeavours to deliver, install and commission Deliverables by the date agreed by the parties, or if no such date is agreed, within a reasonable time, however, all dates for delivery, installation or commissioning of Deliverables in a quotation or sales order confirmation form are approximate only and cannot be guaranteed. Time for delivery shall not be of the essence.

7.2 The Customer agrees to co-ordinate its operations with Welcome's installation schedule and accepts liability for any additional charges incurred as a result of any delays necessitating additional site time which are due to circumstances within the Customer's direct control.

## **8. WARRANTY AND LIABILITY**

8.1 Welcome warrants to the Customer that the Licensed Software will operate in all material respects in accordance with the specification therefor contained in the Documents for a period of 90 days from installation provided that the Licensed Software is used in accordance with Welcome's recommendations.

8.2 If the Customer notifies Welcome during the agreed 90 day warranty period of any defect or fault in the Licensed Software in consequence of which it fails to conform in all material respects with its specification and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Licensed Software or used it for a purpose or in a context other than that for which it was designed, Welcome undertakes to rectify any such defect or fault at its expense, provided that all monies due to Welcome from the Customer in respect thereof have been paid in full.

8.3 Unless otherwise agreed, Welcome's sole liability in respect of Hardware, Hardware maintenance and Third Party Software shall be to pass on to the Customer the benefit of any manufacturer's warranty, guarantee or maintenance agreement to the extent that it is able to do so.

8.4 Welcome warrants that any services which it has agreed to provide will be provided with reasonable skill and care.

8.5 Nothing in this agreement shall operate to exclude or limit Welcome's liability for: 8.5.1 death or personal injury caused by Welcome's negligence; or

8.5.2 any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

8.5.3 fraud; or

8.5.4 any other liability which cannot be excluded or limited under applicable law.

8.6 Save for any liability of Welcome accepted under this agreement Welcome shall not be liable for any Customer or third party:

8.6.1 loss of revenue;

8.6.2 loss suffered by a Customer third party;

8.6.3 loss of actual or anticipated profits;

8.6.4 loss of contracts;

8.6.5 loss of the use of money;

8.6.6 loss of anticipated savings;

8.6.7 loss of business;

8.6.8 loss of opportunity;

8.6.9 loss of goodwill;

8.6.10 loss of reputation;

8.6.11 loss of, damage to or corruption of data;

8.6.12 failure by the Customer to keep up to date back up copies of its programs and data;

8.6.13 ex gratia or other payments made by the Customer; or

8.6.14 indirect or consequential loss, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty or otherwise.

8.7 Save for any liability of Welcome accepted under this agreement Welcome's entire liability under this agreement shall be the equivalent of 4 quarters' relevant support charges in the 12 months preceding the incident which triggered Welcome's liability under this agreement.

8.8 The terms and conditions set out above are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, trade usage, course of dealing or otherwise all of which are hereby excluded to the fullest extent permitted by law.

## **9. INSTALLATION**

9.1 Where installation is part of the Deliverables, Welcome may make available a qualified engineer at the Site at a mutually convenient time during Welcome's normal working hours to supervise the installation of the relevant Deliverables. The Customer shall be responsible for satisfying itself that its network environment is suitable for the receipt and operation of the Deliverables, for preparing the Site and staff in accordance with any instructions given by Welcome, for providing all necessary labour and materials and for making ready all equipment and machinery not supplied by Welcome. Installation will be deemed to be completed on the earlier of the issue of written confirmation that the Deliverables have been installed or the date that the Customer commences use of the Licensed Software.

9.2 Where it is necessary for Welcome's employees to be present at the Site overnight, suitable accommodation and subsistence must be provided at the Customer's expense.

9.3 Where connection is required to other systems (PABX, POS etc.), the Customer will supply the relevant protocol to Welcome, and where appropriate, contract for the development of interfaces in advance.

## **10. CUSTOMER'S OBLIGATIONS**

During the continuance of this agreement the Customer shall:

10.1 ensure that the Software is used only in accordance with the Manual or advice from Welcome by competent employees only;

10.2 make so many back-up copies of the Software and of the Customer's databases and computer records as may be necessary in accordance with best computing practice;

10.3 apply all updates to the Software issued by Welcome;

10.4 not alter or modify the Software in any way whatsoever nor permit the Software to be combined with any other programs;

10.5 ensure that it promptly return to us without any set off, counterclaim or any other similar deduction, any money or funds that have been sent to the Customer in error which relate to Welcome Systems or its services within 5 days of us notifying the Customer of the error.

10.6 not request, permit or authorise anyone other than Welcome to provide support services for the Software;

10.7 co-operate fully with Welcome's personnel in the diagnosis of any error or defect in the Software;

10.8 permit designated employees and sub-contractors of Welcome access to the Customer's offices and to such of the Customer's software and computer systems as is necessary to enable Welcome to provide the Service;

10.9 make available to Welcome free of charge all information facilities and services reasonably required by Welcome to perform the Service;

10.10 have installed such telecommunication facilities as are reasonably required by Welcome for testing and diagnostic purposes at the Customer's expense; and

10.11 ensure in the interests of health and safety that Welcome's personnel, if on the Customer's premises for the purposes of this agreement, are at all times accompanied by a member of the Customer's staff familiar with the Customer's premises and safety procedures.

## **11. INTELLECTUAL PROPERTY RIGHTS**

11.1 All Intellectual Property Rights in the Licensed Software and any modifications thereof shall belong to Welcome during the subsistence of the agreement and after termination of this agreement.

11.2 Welcome shall defend the Customer against any claim that the normal use of the Licensed Software infringes the Intellectual Property Rights of any third party and shall indemnify the Customer against any award made against the Customer in respect of such a claim by a competent court of jurisdiction provided that Welcome is given immediate and complete control of such claim, that the Customer does not prejudice Welcome's defence of such claim, that the Customer gives Welcome all reasonable assistance with such claim and that the claim does not arise as a result of the use of the Licensed Software otherwise than in accordance with the terms of its license or in combination with any equipment (other than the Designated Equipment) or programs not supplied or approved by Welcome. Welcome shall have the right to replace or change all or any part of the Licensed Software in order to avoid any infringement

11.3 The foregoing states the entire liability of Welcome to the Customer in respect of the infringement of the Intellectual Property Rights of any third party.

## **12. SOFTWARE LICENSE**

12.1 In consideration and upon payment of the Purchase Price for the Licensed Software, Welcome grants to the Customer a nonexclusive, non-transferable license to use the Licensed Software on the Designated Equipment at the Site subject to these terms and conditions.

12.2 The Customer shall treat the Licensed Software and the Documents as strictly confidential and shall not divulge the whole or any part thereof to any third party provided that this sub-clause shall not apply to information which was rightfully in the Customer's possession prior to disclosure by Welcome, which is already public knowledge or becomes so at a future date (otherwise than as a breach of this sub-clause).

12.3 The Customer shall ensure that its employees comply with the provisions of this sub-clause.

12.4 Except to the extent and in the circumstances expressly required to be permitted by law, the Customer shall not alter, modify, adapt or translate the whole or any part of the Licensed Software in any way whatsoever nor permit the whole or any part of the Licensed Software to be combined with or to become incorporated in any other programs nor decompile, disassemble or reverse engineer the Licensed Software or any part thereof nor attempt to do any of such things. To the extent that local law grants to the Licensee the right to decompile the Licensed Software in order to obtain information necessary to render the Licensed Software interoperable with other computer programs used by the Customer, Welcome hereby undertakes to make that information readily available to the Customer and the Customer agrees to make such requests of Welcome before attempting to decompile the Licensed Software. Welcome shall have the right to impose reasonable conditions such as a reasonable fee for

doing so. In order to ensure that the Customer receives the appropriate information, the Customer must first give Welcome sufficient details of the Customer's objectives and the other software concerned.

12.5 The Customer may only make copies of the Licensed Software for operational security and back-up purposes but shall make no other copies thereof. Such copies and the media on which they are stored shall be the property of Welcome and the Customer shall ensure that all such copies bear the same proprietary notices as the original. The provisions of this license shall apply to all such copies as they apply to the Licensed Software. No copies may be made of any Documents without the prior written consent of Welcome.

### **13. TERMINATION**

Welcome reserves the right to terminate this agreement immediately:

13.1 if the Customer commits any material breach of the terms of this license agreement and (if such breach is capable of remedy) fails to rectify the breach within 30 days of receipt of a notice from Welcome requesting that the Customer remedy the breach;

or

13.2 if the Customer ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or

13.3 if the Customer becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to the Customer; or

13.4 if a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of the Customer, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or

13.5 if the ability of the Customer's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of the Customer's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or

13.6 If any process is instituted which could lead to the Customer being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

13.7 Forthwith upon termination of the license the Customer will return the Licensed Software and all copies of the whole or any part thereof to Welcome or, at Welcome's option, shall destroy the same and certify to Welcome that they have been so destroyed. The Customer shall also cause the Licensed Software to be erased from the Designated Equipment (or shall allow Welcome to erase the Licensed Software from the Designated Equipment) and shall certify to Welcome that the same has been done. Termination of the license shall not affect any accrued rights or liabilities of either party. For the avoidance of doubt, there shall be no refund of any element of the Purchase Price by reason of termination of the license.

## **14. THIRD PARTY SOFTWARE**

The Customer undertakes to comply with the terms of the end user license terms of the Third Party Software, copies of which are held

at;

14.1 [www.qas.com/legal](http://www.qas.com/legal);

14.2 [www.postcodeanywhere.co.uk/register/terms.aspx](http://www.postcodeanywhere.co.uk/register/terms.aspx); and

14.3 on Welcome's website at <http://welcome-systems.uk/wpcontent/uploads/2015/12/PosConnectLicenseAgreement.pdf>

## **15. HARDWARE**

While Welcome may supply Hardware, Welcome does not make any agreement to service or maintain Hardware other than to pass on the benefit of any manufacturer's maintenance agreement accompanying such hardware to the extent that it is able to do so except by separate special arrangement. In the event that the Customer requires Welcome personnel to assist with a hardware problem, Welcome will charge the Customer for the actual telephone, remote connection, and/or site visits at Welcome's current listed rate, unless the hardware concerned is covered by Welcome under a separate agreement. All costs of CD's, shipping and transport expenses as well as staff and travel costs will be paid in full by the Customer.

## **16. FORCE MAJEURE**

Welcome shall not be liable for any failure to supply or delay in supplying Deliverables to the extent that the same is caused by any factor beyond Welcome's reasonable control and Welcome reserves the right to cancel, vary or suspend supply or performance of the Deliverables in such circumstances.

## **17. WAIVER**

No forbearance, delay or indulgence by either party in enforcing these terms and conditions shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

## **18. ENTIRE AGREEMENT**

The Contract supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof provided that nothing in this term shall limit a party's liability for fraudulent misrepresentation.



## **19. ALTERATION**

No addition to or modification of any of these terms and conditions shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

## **20. THIRD PARTY RIGHTS**

A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **21. SEVERABILITY**

Notwithstanding that the whole or any part of any terms and conditions of the Contract may prove to be illegal or unenforceable, the other provisions of the Contract and the remainder of the term or condition in question shall remain in full force and effect.

## **22. ENGLISH LAW**

The Contract shall be governed and construed in accordance with English Law and any grievance will be adjudged under the nonexclusive jurisdiction of the English Courts.