

### Terms and Conditions

These terms and conditions form part of the agreement made between Welcome Systems Ltd and the Customer for software support whereby during the continuance of the agreement, Welcome Systems Ltd will supply and the Customer will accept support of the software products specified in the agreement (“the Software”) under the terms and conditions set out below.

#### Definitions:

“Welcome”	-	Welcome Systems Limited
“the Service”	-	the support services listed below
“the Customer”	-	any party with whom Welcome contracts for the Service
“the Manual” Software	-	the software manual supplied to the Customer with the Software

#### SUPPORT SERVICES

By entering into this agreement with Welcome, the Customer becomes entitled to the following support services subject to payment by the Customer of the associated support charge and compliance by the Customer with its obligations under the heading “Customer Obligations” below.

#### Updates

Welcome is continually improving and enhancing the various packages in its product range. These enhancements will be periodically released to the Customer as an inclusive part of the Service.

#### New Releases/Upgrades

The Customer will be informed of new releases and extensions to the product range and Welcome’s charges therefor.

#### Telephone and Online Chat Support

Welcome undertakes to provide telephone and online chat software support relating to the Software only subject to the exclusions below. The times and telephone numbers are detailed in the Help Definitions document. During busy periods, Welcome will operate a priority system, dealing with the most urgent calls first.

The aim of Welcome’s support desk is to offer telephone support for trained operators using the Software. If a training need is identified, Welcome will be pleased to provide the necessary training at its standard rate of charge from time to time.

#### SITE VISITS

Welcome will use its reasonable endeavours to resolve any difficulty within a reasonable time by telephone. If this does not prove possible, Welcome may arrange for a site visit by its representatives or agents which will be charged at Welcome’s standard rate of charge from time to time.

#### EXCLUSION FROM SERVICE

The Service does not cover:

- Telephone support in respect of defects or errors adequately covered by the Manual;
- Non-emergency calls outside core office hours as defined by the Help Definitions document
- Problems arising out of any alterations or additions to the software, however slight other than those made by Welcome;
- Problems arising out of any alterations in or the failure of the hardware or operating system environment in which the Software operates;
- Any defects arising out of any interface with any other software operating on the system not supplied by Welcome.

Welcome shall not be obliged to provide support in any of the above circumstances, however, should it do so, Welcome reserves the right to make a charge at its standard rate of charge from time to time for any such support calls.

## **CHARGES**

In consideration of the provision of the Service the Customer shall pay the support charge as specified in the agreement. Cleared funds must be received two weeks prior to the anniversary of the agreement start date.

Welcome shall be entitled at any time and from time to time with effect from the expiry of the first 12 months of the agreement to increase its annual support charge to accord with any change in Welcome's standard scale of charges by giving to the Customer not less than 45 days' notice. Where and whenever such notice is given, the Customer shall have the right to terminate this agreement as from the date on which such notice expires by giving to Welcome written notice of termination not less than 30 days before such date.

The annual support charge and any additional charges payable under this agreement are exclusive of VAT which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

## **CUSTOMER'S OBLIGATIONS**

During the continuance of this agreement the Customer shall:

- ensure that the Software is used only in accordance with the Manual or advice from Welcome by competent trained employees only;
- 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;
- apply all updates to the Software issued by Welcome;
- not alter or modify the Software in any way whatsoever nor permit the Software to be combined with any other programs without the prior written consent of Welcome;
- not request, permit or authorise anyone other than Welcome to provide support services for the Software;
- co-operate fully with Welcome's personnel in the diagnosis of any error or defect in the Software;
- 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;
- make available to Welcome free of charge all information facilities and services reasonably required by Welcome to enable Welcome to perform the Service;
- have installed such telecommunication facilities as are reasonably required by Welcome for testing and diagnostic purposes at the Customer's expense;
- 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.

## **THIRD PARTY GOODS**

While Welcome will use all reasonable endeavours to give initial advice on faults in software not supplied by Welcome or on hardware faults, it is the Customer's responsibility to ensure that it has made adequate arrangements for the maintenance and support of hardware and third-party software. Welcome would be pleased to assist with these arrangements if necessary. Data corruption caused by hardware faults may well be too complex to rectify over the telephone. If a site visit is necessary to assist with data restoration, it will be charged at Welcome's standard rate of charge from time to time.

## **SYSTEM CONFIGURATION**

If changes are made to the hardware arrangements at the installation address: eg. installation of a new computer, printer or switchboard or alteration of the existing network configuration, Welcome cannot assist with any necessary configuration changes or resulting problems over the telephone

unless **agreed in advance**. In any case, Welcome cannot guarantee that the necessary configuration changes will be successfully completed over the telephone. If a site visit is required, it will be arranged at a mutually convenient time and be charged at Welcome's standard rate of charge from time to time.

#### **LIMITATION OF LIABILITY**

Welcome shall not be liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation any loss of use of the Software or loss of or spoiling of the Customer's data) resulting from any defect or error in the Software except to the extent that such loss or damage arises from any unreasonable delay by Welcome in providing the Service and then only to the extent not excluded by this agreement.

Where Welcome is liable to the Customer for negligence, breach of contract or any other cause of action arising out of this agreement such liability shall not exceed the annual support charge for the year in which the relevant liability arises.

Welcome shall not be liable to the Customer for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss or damage whatsoever even if Welcome shall have been advised of the possibility thereof and whether arising from negligence, breach of contract or howsoever.

Welcome shall not be liable to the Customer for any loss arising out of any failure by the Customer to keep full and up to date security copies of the computer programs and data it uses in accordance with best computing practice.

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

Welcome cannot accept any responsibility for any loss or damage, however caused, arising out of the Customer choosing to rely on Welcome's advice in relation to hardware or software supplied by a third party.

The above clause is not intended to exclude or restrict liability for any personal injury or death arising out of Welcome's negligence in the provision of the Service.

#### **FORCE MAJEURE**

Welcome shall not be liable for any failure of the Software or the Service which is caused by any factor beyond Welcome's reasonable control, including, but not limited to any failure in telecommunications/data equipment, internet services and/or infrastructure or other utility services.

#### **DURATION AND TERMINATION**

This agreement shall commence on the start date specified in the agreement and shall continue for a period of 12 months and thereafter for further 12 month periods unless and until terminated in accordance with this clause.

Either party may terminate this agreement on giving to the other not less than three months' notice in writing.

Welcome reserves the right to terminate this agreement immediately:

- (a) if the Customer fails to pay the support charge within two weeks prior to the anniversary of the starting date of this agreement; or
- (b) if the Customer shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the Customer shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or
- (c) if the Customer's licence to use the Software shall terminate.

Any termination of this agreement prior to the expiry of 12 months from the start date of the agreement or any anniversary thereof, save where such termination is as a result of Welcome giving three months' notice, shall not entitle the Customer to a refund of any part of the annual support charge paid in advance by the Customer.

#### **WAIVER**

No forbearance, delay or indulgence by either party in enforcing the provisions of this agreement 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.

#### **ENTIRE AGREEMENT**

This agreement 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 clause shall limit a party's liability for fraudulent misrepresentation.

#### **ALTERATION**

No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

#### **SUB-CONTRACTORS**

Welcome shall be entitled to engage the services of sub-contractors or agents to perform any of its obligations hereunder.

#### **NOTICES**

All notices which are required to be given under this agreement shall be in writing and shall be sent to the address of the customer or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by first class pre-paid letter, email or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when dispatched.

#### **APPLICABLE LAW**

This agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

#### **THIRD PARTY RIGHTS**

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

#### **SEVERABILITY**

Notwithstanding that the whole or any part of any provisions of this agreement may prove to be illegal or unenforceable the other provisions of this agreement and the remainder of the provision in question shall remain in full force and effect.