

# MANAGED SERVICES TERMS AND CONDITIONS

## Definitions and Interpretation

1.1 In these Terms and Conditions the following words and phrases shall, unless the context otherwise requires, have the following meanings:

### **Annual Service Charge:**

the sum mentioned in clause 3.2 below as varied in accordance with clause 3.3 below;

### **Client's site:**

the site or sites nominated by the Client as specified at time of acceptance;

### **Equipment:**

the equipment specified in the accepted Estimate and clarified during onboarding or any replacement thereof which is provided under these Terms and Conditions together with any additions or deletions which may from time to time be agreed in writing between the parties;

### **Estimate:**

the estimate accepted by either writing or by acceptance in the client portal which shall be deemed to be incorporated into these Terms and Conditions;

### **Response Time:**

the maximum time as provided in the chosen Package within which ZOOC LTD undertakes to respond to a request for service and which elapses between the time when the need for a service visit is acknowledged and the time of engagement of the engineer;

### **Package:**

the Package chosen and detailed with the Estimate to these Terms and Conditions;

### **Service:**

the resolution of faults with or directly related to the Equipment.

1.2 Headings are for convenience only and do not affect interpretation. Save where the context otherwise requires, references to clauses are to clauses of these Terms and Conditions.

1.3 Unless the context otherwise so requires:

1.3.1 references to ZOOC LTD and the Client include their permitted successors and assigns;

1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and

1.3.3 references to any gender include all genders.

1.4 These Terms and Conditions is made on the date and between the parties as specified in the Particulars.

## **2. Provision of Support Services**

2.1 The Terms and Conditions set out below apply and prevail over any other previous maintenance or support agreement.

- 2.2 ZOOC LTD agrees to provide, and the Client agrees to accept the Service as set out in clause 4 and the Package and as provided for in these Terms and Conditions.
- 2.3 Client expressly acknowledges that ZOOC LTD is under no responsibility to carry out major comprehensive overhauls of the Equipment and any such overhaul is the responsibility of the Client and will only be carried out by ZOOC LTD subject to separate negotiation and agreement.
- 2.4 Hardware modifications may include changes required to correct deficiencies or provide minor enhancements. No new feature or functionality upgrades will be included. ZOOC LTD will install appropriate hardware maintenance releases sufficient to remedy a fault but not to provide improvement by upgrade.

### 3. **Duration**

- 3.1 The Client shall pay to ZOOC LTD in advance a service charge being the relevant sum or sums for the following 1 month period.
- 3.3 Unless otherwise stated in the Particulars, each complete year of these Terms and Conditions shall constitute a new period. Not less than 30 days prior to the commencement of a new period ZOOC LTD shall advise the Client of any change to the price, cover and equipment covered for that new period.
- 3.4 Save for changes made in accordance with clause 3.3 above, changes to these Terms and Conditions shall be valid only if agreed in writing by both parties.

### 4. **ZOOC LTD's Responsibilities**

- 4.1 The Service to be provided by ZOOC LTD shall be as defined in the Package.
- 4.2 Following a request by the Client for Service, ZOOC LTD shall, subject to any circumstances beyond its control:
- 4.2.1 confirm by phone/email that the Client has carried out the procedures necessary to establish that the fault is not external to the Supported Equipment, and if necessary to determine the exact nature of the reported fault and carry out any remedial action required;
- 4.2.2 interrogate the system via remote access where practicable and perform diagnostic routines;
- 4.2.3 attend the Client's site and repair or replace the defective Equipment if necessary (see Package for applicable charges).
- 4.3 The Response Time shall be as specified in the Package.
- 4.4 All replaced equipment shall be removed and shall become the property of ZOOC LTD.
- 4.5 In the event of a fault being reported to ZOOC LTD which is found to be not present or external to the Equipment, then ZOOC LTD reserves the right to make a call-out charge at its then current service rates.
- 4.6 ZOOC LTD shall ensure that its staff and subcontractors conform to all reasonable security, safety, works regulations, and such reasonable local instructions as may be notified by the Client whilst on the Client's site.
- 4.7 ZOOC LTD will perform routine preventative maintenance checks and carry out adjustments as necessary to the Equipment periodically as stipulated in the Package.
- 4.8 ZOOC LTD will provide an on-call service for the repair of faults in the Equipment between the hours defined in the Package (hereinafter called "stipulated hours") and will respond to calls by the Client within those hours.
- 4.9 ZOOC LTD will remove and organise replacement of Equipment supplied by ZOOC LTD, except where the Equipment or Part:
- 4.9.1 is considered a disposable, or
- 4.9.2 has been subject to unreasonable conditions mentioned in 5.7 of the Maintenance Service Contract Terms, or
- 4.9.3 is outside of that Equipment's or Part's warranty period, or
- 4.9.4 is not set out as a maintainable piece of Equipment or Part in the Particulars.
- Upon ZOOC LTD replacing parts in the circumstances of paragraphs 4.9.1, 4.9.2, 4.9.3 and 4.9.4 above, the Client will pay to ZOOC LTD a charge in consideration thereof together with the cost of the part, upon demand.

- 4.10 ZOOC LTD may (with agreement of the Client) decide that full laboratory recalibration of the Equipment is appropriate (which should not occur more than once a year) and ZOOC LTD may remove the Equipment in question from the Client's site for such purposes for a period not normally exceeding 10 (ten) working days.
- 4.11 ZOOC LTD may (with agreement of the Client) decide that major repair of the Equipment is appropriate and remove the Equipment from the Client's site. For such major repair ZOOC LTD's responsibility for the temporary loan of a system and the cost of transport and insurance incurred in the removal and return of the Equipment shall be determined by the Package.
- 4.12 The duty of ZOOC LTD to maintain the Equipment under these Terms and Conditions may at the option of ZOOC LTD be suspended in regard to any item of the Equipment or part thereof in need of recalibration or major repair which ZOOC LTD wishes to remove in accordance with paragraphs 4 and 5 of this Schedule until the particular item of Equipment or part thereof is so removed.

## 5. **Client's Responsibilities**

- 5.1 The Client shall pay all sums due as mentioned in clause 6.
- 5.2 Immediately on reporting a fault the Client shall supply the Estimate number for which the service is being requested.
- 5.3 On arrival of the service engineer at the Client's site, the Client shall:
  - 5.3.1 provide free access to the Equipment and shall provide such reasonable facilities for the repair as are required by the service engineer. Such facilities shall include, but are not limited to, access to and use for testing purposes of the Equipment; and
  - 5.3.2 make available a representative of the Client familiar with the use of the Equipment to be always present at the site whilst the Service is being performed.
- 5.4 The Client shall not permit any person other than ZOOC LTD personnel or persons authorized by ZOOC LTD for the purpose to attempt to alter, modify, repair, or change the Equipment in any way. ZOOC LTD reserves the right both to terminate the Agreement in accordance with clause 3.4 and to charge its then current rates to remedy any alterations, remedies, repairs, or changes to the Equipment required to restore the Equipment to its original state prior to the unauthorized modifications.
- 5.5 If the Equipment is designed or intended for use in a static position and such position is changed by the Client without prior consent in writing of ZOOC LTD (regardless of the distance moved, however small) the Service may in ZOOC LTD's sole discretion be suspended until the Equipment in its changed position has been checked by ZOOC LTD and declared by it to be in good working order. The Client shall inform ZOOC LTD of any change in location of the Equipment following which ZOOC LTD reserves the right forthwith at its absolute discretion to discontinue Service. ZOOC LTD reserves the right to charge its then current rates to remedy any alterations, remedies, repairs, or changes to the Equipment required to restore the Equipment to its original state prior to the unauthorized relocation.
- 5.6 The Client shall take all reasonable precautions to ensure the health and safety of ZOOC LTD personnel whilst on the Client's premises.
- 5.7 The Equipment must be installed and maintained in a clean Information Technology type environment where the operating temperature is in the range of 5 to 20 degrees centigrade with a humidity less than 80% non-condensing. The area must be dust free, dry and not subject to excess vibration or electrical interference or any other environmental condition likely to cause damage or prejudice the performance of the Equipment. In the event of failure by the Client to comply with these requirements (and any others notified by ZOOC LTD from time to time) ZOOC LTD shall be entitled to determine that the Service required is not covered by these Terms and Conditions and to charge for the Service at ZOOC LTD's then current service rates.
- 5.8 The Client shall ensure that all requests for Service are made by authorized persons and shall provide ZOOC LTD with a list of the names of authorized persons and shall notify ZOOC LTD of any changes from time to time.

- 5.9 The Client shall be responsible for choosing, arranging and for notifying ZOOC LTD of all required software including but not limited to Anti-malware, Internet Security. Upon receipt of sufficient notification, ZOOC LTD shall use its reasonable endeavours to ensure that the software will be compliant with existing software, but no warranty is given in this regard. In particular, no guarantee can be given that any software shall remain compliant with later or different versions of virus protection software. Any costs incurred by ZOOC LTD in procuring compliance with the Client's software, anti-malware, internet security or additional hardware shall be paid by the Client at ZOOC LTD's then current rates.
- 5.10 The Client agrees that ZOOC LTD may carry out the Services outside the stipulated hours upon Equipment which is not required for the Client's operational purposes outside stipulated hours.
- 5.11 The client shall ensure that all ZOOC LTD policies are adhered to in relation to any ZOOC LTD supplied service. Policies will be updated from time to time and the latest versions are available to download at <https://www.zooc.co.uk/policies>. Policies are also available via email and can be requested by emailing [help@zooc.co.uk](mailto:help@zooc.co.uk).

## 6. Prices and Payment

- 6.1 The Service Charge will be invoiced in advance and shall be payable by the Client in accordance with the invoice payment terms, shown on the invoice.
- 6.2 The Client acknowledges that ZOOC LTD is under no obligation to attend if the Service has not been paid for.
- 6.3 The Client shall pay for any services performed by ZOOC LTD which are not covered by these Terms and Conditions at ZOOC LTD's then current service rates in accordance with the invoice payment terms, shown on the invoice for both labour and materials.
- 6.4 The Client will be responsible for Value Added Tax on all invoices rendered by ZOOC LTD.

## 7. Exclusions and Limitation of Liability

- 7.1 ZOOC LTD shall have no obligations under these Terms and Conditions and the Client shall fully indemnify ZOOC LTD against all losses incurred by ZOOC LTD in respect of:
- 7.1.1 any faults arising from installation which has not been carried out by ZOOC LTD or its appointed representative;
  - 7.1.2 any equipment or software which has not been supplied by ZOOC LTD or its appointed representative, including for the avoidance of doubt any interruption of service caused by such equipment, software, malware, or internet protection software;
  - 7.1.3 any Equipment which was defective prior to the effective date of these Terms and Conditions;
  - 7.1.4 any Equipment which in the view of ZOOC LTD has been subject to unreasonable environmental conditions whether involving any extremes of temperature dust humidity or otherwise or to other unreasonable physical or electrical stress;
  - 7.1.5 any Equipment which in the view of ZOOC LTD is located in a place where the working conditions for its personnel are unreasonably unpleasant;
  - 7.1.6 any faults arising from misuse, accident or negligence by the Client or any other party;
  - 7.1.7 fair wear and tear;
  - 7.1.8 system reconfiguration and/or management; or
  - 7.1.9 any other liability except as expressly provided herein.
- 7.2 ZOOC LTD shall not be liable to the Client or any third party for any direct or indirect or incidental physical economic or consequential loss or damage including, without limitation, loss of revenue, damages for loss or interruption of service or loss of data or costs incurred arising out of or related to the service provided for in these Terms and Conditions (including cost of procurement of a substitute Service) even if ZOOC LTD or its servant or agent had knowledge of the possibility or the likelihood of such loss or damages PROVIDED that nothing in these Terms and Conditions shall limit ZOOC LTD's liability in negligence for death or personal injury.

- 7.3 Any liability of ZOOC LTD to the Client for any claim or claims whatsoever related to the Equipment or the services provided under these Terms and Conditions in respect of a particular site whether in contract in tort or otherwise shall not exceed in total the amount actually received by ZOOC LTD on account of the annual service charge under these Terms and Conditions in respect of that particular Client's site to which such claim or claims relate.
- 7.4 ZOOC LTD shall not be liable for any call-out charges incurred by the Client to a third party.
- 7.5 ZOOC LTD reserves the right to refuse to service any Equipment which is more than five years old.

## 8. Termination

- 8.1 These Terms and Conditions shall come into force on the Effective Date and shall, subject to any Minimum Term provision in the Estimate, remain in force until terminated by either party on the provision of not less than ninety (90) days' notice in writing (save that no termination may take effect until all Goods and/or Services set out in all Orders have been provided and all payments received by ZOOC LTD), passed unless terminated earlier in accordance with clauses 8.2 or 8.3.
- 8.2 Each party shall have the right, without prejudice to its other rights or remedies, to terminate these Terms and Conditions immediately by notice to the other if the other:
- 8.2.1 is in material or persistent breach of any of its or its obligations under these Terms and Conditions and either that breach is incapable of remedy or it shall have failed to remedy that breach within 90 days after receiving written notice requiring it to do so, or
- 8.2.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986); or becomes insolvent; or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction); or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets; or enters into or proposes any composition or arrangement with its creditors generally; or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 8.3 ZOOC LTD shall have the right, without prejudice to its other rights or remedies, to terminate these Terms and Conditions immediately by notice to the Client, if the Client:
- 8.3.1 sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity, or
- 8.3.2 disputes the ownership or validity of ZOOC LTD's intellectual property rights.

## 9. Forces Majeure

ZOOC LTD shall not be liable to the Client for any delay or non-performance of its obligations under these Terms and Conditions arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion.

## 10. Assignment and Sub-Contracting

- 10.1 The Client may not assign, sub-license, sub-contract, mortgage or otherwise transfer any of its rights or obligations under these Terms and Conditions without the prior written consent of ZOOC LTD.
- 10.2 ZOOC LTD may sub-contract any of its obligations under these Terms and Conditions on notice to the Client provided that it shall remain liable to the Client for the performance of all such obligations.

**11. Confidentiality and Publicity**

- 11.1 The Client agrees and undertakes that during the term of these Terms and Conditions and thereafter it will keep confidential all, and will not use for its own purposes nor without the prior written consent of ZOOC LTD disclose to any third party any, information of a confidential nature (including trade secrets and information of commercial value and the technical details of the code in the Software or any of it, and the content of any training) which may become known to the Client in the course of the Services (“Confidential Information”) unless such information is public knowledge or already known to the Client at the time of disclosure or subsequently becomes public knowledge other than by breach of these Terms and Conditions or subsequently comes lawfully into the possession of the Client from a third party.
- 11.2 For the avoidance of doubt, nothing in these Terms and Conditions shall prevent ZOOC LTD from referring in its literature, website and advertising and marketing material or elsewhere to the fact that ZOOC LTD supplied the Services and including details.
- 11.3 The provisions of this clause 11 shall remain in full force and effect notwithstanding any termination of these Terms and Conditions.

**12. Non-Solicitation**

- 12.1 The Client shall not either on his own account or in conjunction with or on behalf of any person, firm or company and whether directly or indirectly invite solicit or induce any officer, employee, agent or contractor of ZOOC LTD involved with any of the Services to terminate their employment or engagement with ZOOC LTD or attempt to do so.
- 12.2 The restriction in clause 12.1 shall continue in force during the continuance of the Services, supply of Goods, or licence of any intellectual property rights under these Terms and Conditions (whichever is the longer) and for a period of twelve months thereafter.
- 12.3 The Client:
  - 12.3.1 agrees that its obligations arising pursuant to clause 12.1 and 12.2 are separate and severable; and
  - 12.3.2 acknowledges that, while such obligations are considered by the Client to be reasonable in all the circumstances as at the date of the contract under these Terms and Conditions, they may by their nature become invalid because of changing circumstances or other unforeseen reasons; and
  - 12.3.3 agrees that if any of the obligations arising pursuant to clauses 12.1 and/or 12.2 shall be judged to be void or ineffective for whatever reason but would be judged to be valid and effective if part of the wording of the relevant undertaking were amended to reduce the extent of the obligation, the relevant obligation shall apply with such modifications as may be necessary to make it valid and effective.
- 12.4 The obligations under this clause 12 shall survive the expiry or the termination of these Terms and Conditions for whatever reason.

**13. Waiver**

- 13.1 By placing an order with ZOOC LTD, the Client is expressly waiving any printed terms the Client may have to the extent that they are inconsistent with these Terms and Conditions.
- 13.2 No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

**14. Severability**

If any provision of these Terms and Conditions is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

15. **Amendments**

Any amendment, waiver or variation of these Terms and Conditions shall not be binding on the parties unless set out in writing, expressed to amend these Terms and Conditions and signed by or on behalf of each of the parties.

16. **Third Party Rights**

No term of these Terms and Conditions is intended to confer a benefit on, or to be enforceable by, any person who is not a party to these Terms and Conditions.

17. **Notices**

Notices (regarding, for example, termination of or claims under these Terms) shall be in writing and shall be sent to the other party marked for the attention of the person at the address set out for such party in these Terms and Conditions. Notices may be sent by first-class recorded mail or electronic mail transmission provided that electronic mail transmissions are confirmed within 72 hours by first-class recorded mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed electronic mail transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above. Unless stated otherwise, the provisions of this clause 17 shall not apply to day-to-day communications relating to the performance of the Service.

18. **Entire Agreement**

- 18.1 These Terms and Conditions and the documents annexed hereto or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 18.2 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between ZOOC LTD, and the Client should not rely on them in entering into any contract with ZOOC LTD. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by ZOOC LTD shall be subject to correction without any liability on the part of ZOOC LTD.
- 18.3 ZOOC LTD's employees or agents are not authorized to make any representations concerning the Goods and/or Software unless confirmed by ZOOC LTD in writing. In entering into these Terms and Conditions, the Client acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind these Terms and Conditions for any such representations which are not so confirmed (unless such representations were fraudulently made).
- 18.4 Any advice or recommendation given by ZOOC LTD or its employees or agents to the Client or its employees or agents as to the storage, application, or use of the Goods and/or Software which is not confirmed in writing by ZOOC LTD is followed or acted upon entirely at the Client's own risk and, accordingly, ZOOC LTD shall not be liable for any such advice or recommendation which is not so confirmed.
- 18.5 Nothing in these Terms and Conditions affects or limits ZOOC LTD's liability for fraudulent misrepresentation.
- 18.6 All other ZOOC LTD services not set out in the Particulars or confirmed in writing including but not limited to; Design, Communications, Internet Access, Hosting and Infrastructure Services will be charged at ZOOC LTD's then current time, service and material rates.

19. **Governing Law and Jurisdiction**

These Terms and Conditions shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.