

Terms & Conditions



1. APPLICATION OF CONDITIONS

- 1.1. These terms and conditions shall govern the Contract between Optisoft Limited of 7 Alpha Court, Monks Cross Drive, Huntington, York, YO32 9WN (referred to in these conditions as "Optisoft") and the Client (referred to in these conditions as "you" or "your") for the supply and support of software and, where appropriate, Equipment to the exclusion of any terms or conditions which you may purport to apply under any order, offer, counter-offer, order confirmation or other document.
- 1.2. No variation to these terms and conditions shall have effect unless expressly agreed to in writing and signed by a duly authorised representative of Optisoft.
- 1.3. Each order for the supply and support of software and, where requested, Equipment shall be deemed to be an offer by you to enter into a contract with Optisoft subject to these terms and conditions.
- 1.4. Each quotation given by Optisoft to you shall describe Equipment, Software and Support, and Third-Party Software included in the quotation and shall provide a quotation for the Equipment Price, Software Licence Fee, Third Party Software Licence Fee, Annual Support Charge and Annual Equipment Maintenance Charge and shall, where known, specify the Equipment Location.
- 1.5. Any quotation is given by Optisoft on the basis that no Contract shall come into existence until you have signed and delivered to Optisoft a Confirmation of Order in the form sent to you by Optisoft the date of signature by you of such Confirmation of Order being the Effective Date of the Contract but Optisoft shall be under no obligation to commence performance of the Contract until it receives the signed Confirmation of Order from you. Any amendment by you of any of the details, including for the avoidance of doubt the Contract Price, set out in the Confirmation of Order sent to you by Optisoft for signing shall not be deemed to be a Confirmation of Order by you and shall not, therefore, bring a Contract into existence.
- 1.6. By accepting this agreement or using the software/service, you agree to all of these terms and consent to the transmission of certain information during activation and for internet-based features of the software/service. If you do not accept and comply with these terms, you may not use the service or software.

2. DEFINITIONS

- 2.1. "Agreement" means these terms and conditions, the Confirmation of Order containing the details of the Contract entered into between the parties in accordance with the provisions of clauses 1.3, 1.4 and 1.5 above and any schedules attached to these terms and conditions.
- 2.2. "Annual Equipment Maintenance Charge" means, where appropriate, the annual charge for maintenance of the Equipment as specified in the Contract as increased from time to time in accordance with clause 10 of these terms and conditions
- 2.3. "Annual Support Charge" means the annual charge for maintenance and support of the Software as specified in the Contract as increased from time to time in accordance with clause 10 of these terms and conditions
- 2.4. "Confidential Information" means all information (whether commercial, technical, financial or otherwise) relating to the disclosing party, its employees, customers, clients and suppliers which is designated as being confidential or which by its nature is confidential including, without limitation, all trade secrets, all designs, data, drawings, specifications, processes, source or object codes, and all other information which ought reasonably to be considered confidential
- 2.5. "Confirmation of Order" means the document in the form supplied to you by Optisoft which is to be signed and dated and returned to Optisoft by you in order for the Contract to come into force in accordance with clause 1.5 above
- 2.6. "Contract" means the contract entered into between Optisoft and you in accordance with clauses 1.3 to 1.5 of these terms and conditions
- 2.7. "Contract Price" means the aggregate sum payable under the Contract in respect of the Equipment, the Licence Fee and the Third-Party Licence Fee, support charges and all other items set out in the Confirmation of Order.
- 2.8. "Delivery Date" means the date upon which the delivery of the Equipment, Software and Third-Party Software takes place at the Equipment Location.
- 2.9. "Documentation" means the user manuals, including technical specification, supplied by Optisoft under this Agreement and all copies thereof.
- 2.10. "Effective Date" means the date of signing by you of the Confirmation of Order and sending to us in accordance with clause 1.5 above.
- 2.11. "End User Licence Agreement" means any licence to use Third Party Software supplied by the Supplier.
- 2.12. "Equipment" means the equipment agreed to be supplied by Optisoft to you under the Contract.
- 2.13. "Equipment Location" means your site within the United Kingdom as set out in the quotation from Optisoft unless varied by agreement in the Contract.
- 2.14. "Equipment Price" means the price payable by you to Optisoft for the Equipment determined in accordance with clause 1.5 above.
- 2.15. "Installation" means either, (a) the successful completion of installation by Optisoft of the System at the Equipment Location in accordance with Optisoft's then prevailing standard practice, or, (b) if you install the Equipment, delivery to you.
- 2.16. "Licence Fee" means the fee payable by you to Optisoft, set out in the Contract, for the right to use the Software.
- 2.17. "Software" means the application software product described in the Contract
- 2.18. "Support Service" means the support service for the Software described in clause 9
- 2.19. "System" means the Equipment, Software and Third-Party Software ordered by you as described in the Contract.
- 2.20. "Third-Party Software Licence Fee" means the fee set out in the Contract.
- 2.21. "Third-Party Software" means any software owned by any Third-Party supplier (the "Supplier"), the packaging, of which contains the End User Licence Agreement upon which the Supplier permits the product to be used and which is supplied by Optisoft to you.

3. OPTISOFT'S OBLIGATIONS

- 3.1. Optisoft shall:
- 3.2. use reasonable endeavours to meet any estimated date of delivery but Optisoft shall not be liable for any failure to meet any such estimated date of delivery and time shall not be of the essence for delivery; and
- 3.3. arrange for delivery at the Equipment Location and perform Installation, where appropriate; and
- 3.4. comply with any reasonable safety and security procedures applicable to the Equipment Location and made known by you; and
- 3.5. where requested by you, facilitate the provision of maintenance services for the Equipment subject to payment of the Annual Equipment Maintenance Charge.
- 3.6. Optisoft reserves the right to substitute items of Equipment or software necessary for the operation of the Equipment provided such substituted Equipment or software performs substantially in accordance with the specification of the Equipment. This substitution shall not affect the Equipment Price.

4. YOUR OBLIGATIONS

- 4.1. You shall:
- 4.2. supply Optisoft, upon request with any information or assistance reasonably necessary for Optisoft to perform its obligations under this Agreement; and
- 4.3. provide Optisoft's personnel with full, free and safe access to the Equipment Location, including any office, computer and remote dial-in telecommunications facilities, to enable Optisoft to perform its obligations under this Agreement; and
- 4.4. comply with all reasonable instructions from Optisoft relating to the operation of the Software; and
- 4.5. take daily back-up copies of your data with a minimum of three copies and keep the back-up copies safe; and
- 4.6. obtain Optisoft's prior written consent to relocate the Equipment and Software, which will not be unreasonably withheld, and pay any additional support charges; and
- 4.7. upon request, permit Optisoft to audit your compliance with the terms of this Agreement or provide Optisoft with a completed certificate of compliance. You shall provide Optisoft with all necessary facilities, and pay any increased charges resulting from the audit; and
- 4.8. where Optisoft is not maintaining the Equipment, you will remain responsible for the support of the Equipment in accordance with the manufacturer's technical specification to enable Optisoft to perform its obligations under this Agreement. For the avoidance of doubt, if Optisoft is not maintaining the Equipment Optisoft shall have no liability to you or any third party for any failure of the Equipment to perform and you shall indemnify Optisoft in full against any claims, damages, expenses (including legal expenses) or losses of whatever nature arising from any such failure of the Equipment to perform; and
- 4.9. pay all sums due under this Agreement promptly and in accordance with the due dates of payment.

5. OWNERSHIP

- 5.1. Title to the Equipment shall vest in you upon receipt by Optisoft of the Equipment Price in full.
- 5.2. Risk of loss or damage to the System or any part thereof shall pass to you upon delivery of the System or any part thereof to the Equipment Location.

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- 5.3. Legal and beneficial title to all intellectual property rights subsisting in or used in connection with the Software or any part thereof and any Documentation, modifications, enhancements and corrections thereto including without limitation any copyright, patents, designs, trade names, trademarks and service marks belongs to and shall remain vested in Optisoft or, where appropriate, a third party ("the Owner"). You will not during or at any time after expiry or termination of this Agreement (whether in whole or with respect to support only) in any way question or dispute the ownership by Optisoft or, where appropriate, the Owner thereof.

6. CONFIDENTIALITY

- 6.1. You acknowledge that the Software and any Documentation, modifications, enhancements and corrections thereto contain the proprietary, confidential and trade secret information of Optisoft or the Owner or, in the case of Third-Party Software, the appropriate third party.
- 6.2. Each party undertakes that it and its directors, employees, appointed consultants, or hired assistance will at all times (both during the term of this Agreement and after its termination) keep confidential, and will not use (other than strictly for the purposes of this Agreement) and will not without the prior written consent of the other party disclose to any third party any Confidential Information relating to the business of the other party, unless the information:
 - 6.2.1. was public knowledge or already known to the disclosing party at the time of disclosure; or
 - 6.2.2. subsequently becomes public knowledge other than by breach of this Agreement; or
 - 6.2.3. subsequently comes lawfully into the possession of the disclosing party from a third party.
- 6.3. To the extent necessary to implement the provisions of this Agreement (but not further or otherwise), either party may disclose Confidential Information relating to the business of the other party to any relevant governmental or other authority or regulatory body, or (where the disclosing party is a body corporate) to any member of the same group of companies, or to any employees of the disclosing party provided that before any such disclosure the disclosing party shall make those persons aware of its obligations of confidentiality under this Agreement and shall use its best endeavours to obtain a binding undertaking as to confidentiality from all such persons.

7. SOFTWARE LICENCING - OUTRIGHT PURCHASE (Legacy Software)

- 7.1. Optisoft is authorised to licence and support the Software and, upon payment by you of the Licence Fee in full, grants to you a personal non-exclusive, non-transferable licence to use the Software, on the Equipment at the Equipment Location for your own internal data processing purposes and to copy the same solely for backup purposes provided always that you adhere to the following material conditions:
 - 7.1.1. you use only one copy of the Software for live operations for your own business purposes only; and
 - 7.1.2. you pay the Licence Fee in accordance with this Agreement; and
 - 7.1.3. you do not provide or make available the Software to any third party; and
 - 7.1.4. you do not delete, amend or otherwise alter any copyright or other ownership notices or legends displayed, contained in, or attached to the Software; and
 - 7.1.5. you do not disassemble, de-compile or reverse engineer the Software; and
 - 7.1.6. you do not sell, trade, distribute, loan, rent, market, disclose, publish technical details of, create derivative works from, copy, modify, enhance, convert or translate the Software; and
 - 7.1.7. you do not exceed the specified number of authorised users.
- 7.2. Any new release of the Software made available during the period of 12 months from the Delivery Date shall be free of charge to you.
 - 7.2.1. After the period of 12 months from the Delivery Date;
 - 7.2.2. any new release of the Software made available by Optisoft shall be free of charge to you provided you continue to use the Support Service and have paid the Annual Service Charge for the year in which the new release is made available; and
 - 7.2.3. if you do not continue to use the Support Service at any time after the period of 12 months from the Delivery Date or have not paid the Annual Service Charge for the year in which a new release of the Software is made available you may only receive the new release on payment to Optisoft of the fee of £95 plus VAT, or such increased fee which may be payable at the date of issue of the new release, in which event the Support Service for the new release shall be available to you for the 12 month period following the issuing to you by Optisoft of the new release.
- 7.3. For the avoidance of doubt any new release of the Software made available to you under the provisions of clause 7.2 above shall be subject to all the provisions of this Agreement.

8. SOFTWARE LICENSING - SUBSCRIPTION SERVICE

- 8.1 Optisoft is authorised to licence and support the Software and, upon payment by you of the Subscription Fee in full, grants to you a personal non-exclusive, non-transferable licence to use the Software, on the Equipment at the Equipment Location for your own internal data processing purposes and to copy the same solely for backup purposes provided always that you adhere to the following material conditions:
 - 8.1.1. Under our license we grant you the right to install and run that one copy of the software unlimited devices for each practice, but only if you comply with all the terms of this document.
 - 8.1.2. Your right to use the service/software is limited to the subscription period. You may have the option to extend your subscription. If you extend your subscription, you may continue using the service/software until the end of your extended subscription period. After the expiration of your subscription, most features of the service and software will stop running.
 - 8.1.3. License transfers are not permitted.
 - 8.1.4. License Activation associates the use of the service/software with a specific practice. Activation is required for each practice to which a software license is assigned. During activation, the software will automatically contact Optisoft to confirm that the license is associated with the practice. Because activation is meant to identify unauthorised changes to the licensing or activation functions of the software, and to otherwise prevent unlicensed use of the software, you have no right to use the service and software after the time permitted for activation and you may not bypass or circumvent activation.
 - 8.1.5. If you connect your device to the Internet, some features of the service or software may connect to Optisoft to send or receive information. You may not always receive a separate notice when they connect. If you choose to use any of these features, you agree to send or receive this information when using that feature.
 - 8.1.6. Optisoft uses the information it collects through the service and software features to upgrade or fix the service and software and otherwise personalise the user experience or improve our products and services. We may use this information we collect to identify and contact you.
- 8.2 Subscription Software Activation
 - 8.2.1. During activation, the software will send information about the software and your device to Optisoft. This information includes the version, license version, language, and product key of the software, the Internet protocol address of the device, and information derived from the hardware configuration of the device. If the licensed device is connected to the Internet, the software will automatically connect to Optisoft for activation.
 - 8.2.2. Re-activation. Some changes to your device components or the software may require re-activation of the software.
 - 8.2.3. Activation failure. During online activation, if the licensing or activation functions of the software are found to be counterfeit or improperly licensed, activation will fail. The software will notify you if the installed copy of the software is improperly licensed.
- 8.3 Data Cloud Hosting for Subscription Software
 - 8.3.1. By using Optisoft hosted services you acknowledge, whilst stringent security practices are in place, that there are risks inherent in Internet connectivity that could result in the loss of your privacy, confidential information and property.
 - 8.3.2. When data is hosted on Optisoft servers, we will not share this data without your permission, we will only access it if required for maintenance purposes and only with your permission.

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8.4 Internet Based Features

- 8.4.1. The following software features use Internet protocols which send to Optisoft device information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you installed the software.
- 8.4.2. Software may periodically check with Optisoft for updates and supplements to the software. If found, these updates and supplements will be automatically downloaded and installed on your licensed device.
- 8.4.3. Optisoft may use the device information, error reports, and malware reports to improve our software and services. We may also share it with others, such as hardware and software vendors. They may use the information to improve how their products run with Optisoft software.
- 8.4.4. You may not use these services in any way that could harm them or impair anyone else's use of them. You may not use the services to try to gain unauthorised access to any service, data, account or network by any means.

8.5 Additional Licensing Restrictions, Requirements and/or Use Rights

- 8.5.1. Some or all of the service/software may be licensed on a trial basis.
- 8.5.2. Your rights to use trial service/software are limited to the trial period.
- 8.5.3. The trial service/software and length of the trial subscription are set forth during the activation process.
- 8.5.4. You may have the option to convert your trial rights to subscription or perpetual rights. Conversion options will be presented to you at the expiration of your trial period.
- 8.5.5. After the expiration of any trial period without conversion, most features of the trial service/software will stop running.

9. SUPPORT SERVICE

- 9.1. Optisoft shall provide a Support Service for the Software and, where applicable, the Third-Party Software as set out in Clause 9.2 provided you pay the Annual Support Charge and/or Software Subscription Fee. The charge for the Support/Subscription Service for the first 12 months period from the Delivery Date is set out in the Confirmation of Order and forms part of the Contract Price. For the avoidance of doubt, if you do not maintain the Support/Subscription Service at any time after the first 12 months period from the Delivery Date Optisoft shall have no responsibility to provide you with a support service and shall have no liability whatsoever in respect of any faults in the Software which may arise.
- 9.2. The Support Service shall be provided by Optisoft as follows:
 - 9.2.1. Optisoft shall operate a help desk from 0900 hours to 1730 hours Monday to Friday excluding Bank and Public Holidays (the "Normal Working Day") and 0900 hours to 1200 hours Saturday to receive telephone calls in respect of faults in the Software and to provide telephone guidance on the operation of the Software and Third-Party Software, if supplied by Optisoft;
 - 9.2.2. You shall not delay in placing a fault call and you shall provide to Optisoft a clear description of the fault in the Software and the circumstances in which it occurs, including sufficient instructions, documentation and data, to enable Optisoft to understand and, if necessary, reproduce the fault;
 - 9.2.3. Optisoft shall prioritise the work on any outstanding faults in the Software according to the severity of each fault and may from time to time make routine error correction updates available for the then current release level of the Software (the "Support Releases");
 - 9.2.4. provided that the you have installed all of the available Support Releases, as set out herein, Optisoft shall provide, during the Normal Working Day, temporary fixes or emergency bypass procedures (dependant, in respect of Third-Party Software, upon their availability from the Supplier, where applicable) in respect of material faults in the Software which prevent you using the Software;
 - 9.2.5. Optisoft shall respond to fault calls by remote diagnosis where appropriate and subject to you providing the necessary access to the Software;
 - 9.2.6. Optisoft shall provide advice by telephone, including advice as to action and checks to be carried out by you, where appropriate;
 - 9.2.7. Optisoft shall provide the Support Service for the then current release level of the Software.
- 9.3. All support and other services which are outside the scope of the Support Service ("Additional Services") shall be provided at Optisoft's sole discretion and may be subject to additional charges at Optisoft's prevailing rates. Additional Services include but are not limited to:
 - 9.3.1. investigation and correction of faults in the Software which result from operator error, incorrect or unauthorised use, interference with or modification of the Software by you or a third party, use or failure of products, equipment (including the Equipment, except where Optisoft is providing maintenance in accordance with the provisions of clause 3.1 of this Agreement) or services used in conjunction with the Software or not supplied by Optisoft; and
 - 9.3.2. any work necessary to assist you to relocate the Software, recover the loss of data or improper use of the Software; and
 - 9.3.3. preparation of estimates and the development of modifications or additions to the Software; and
 - 9.3.4. provision of a support service in respect of Software releases earlier than the release level(s) currently supported; and
 - 9.3.5. travelling time and service fees for visits to the Equipment Location; and
 - 9.3.6. training, implementation and consultancy services; and
 - 9.3.7. provision of the Support Service outside the Normal Working Day.

10. PRICE

- 10.1. The Contract Price is fixed as set out on the Confirmation of Order.
- 10.2. Continuity of the Support Service after the period of 12 months from the Delivery Date shall only be provided in consideration of payment by you of the Annual Support Charge in accordance with clause 9.1 of this Agreement.
- 10.3. The cost of support is included in the Software Subscription Fee in accordance with clause 9.1 of this Agreement.
- 10.4. Optisoft may vary the Annual Support Charge, Software Subscription Fee, the Annual Equipment Maintenance Charge and the Software new release charge upon giving you 30 days' notice.

11. TERMS OF PAYMENT

- 11.1. The Contract Price shall be paid in installments as follows:
 - 11.1.1. 50% upon signature of this Agreement; and
 - 11.1.2. 50% on the Delivery Date to be paid by you to Optisoft upon delivery of the Equipment, Software and Third-Party Software set out in the Confirmation of Order to the Equipment Location.
- 11.2. Support and/or Subscription payments to be made by way of Direct Debit payment into Optisoft's bank account unless Optisoft agrees in writing to accept payment by another means.
- 11.3. Where an Annual Equipment Maintenance Charge is payable the first such payment shall be made by you on delivery to the Equipment Location and subsequent annual payments shall be made by way of Direct Debit payment into Optisoft's bank account unless Optisoft agrees in writing to accept payment by another means.
- 11.4. All prices and fees are exclusive of Value Added Tax which shall be added to any invoice payable under this Agreement at the rate applicable under the relevant regulations.
- 11.5. Without prejudice to any other right or remedy, Optisoft may charge interest on any sums due under this Agreement which are not paid by the due date at the rate of 4% above the NatWest Bank plc base rate accruing daily, before and after judgment from the due date for payment until payment in full has been made.
- 11.6. Optisoft may withhold the Support Service if you are overdue with any payment or are in breach of this Agreement until such time as the payment is made or the breach remedied.
- 11.7. All sums shall be paid in full and free from any rights of set-off and counterclaim, to the extent legally permissible.

12. WARRANTY

- 12.1. Optisoft warrants that it has the right to enter into this Agreement.
- 12.2. Optisoft shall use reasonable care and skill in the performance of Installation, where it provides this service, and any other services it provides under this Agreement. In particular, the Support Service shall be provided using suitably qualified and experienced personnel.
- 12.3. Optisoft does not warrant that the Software is free from error or operates without interruption.

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- 12.4. The Third-party Shrink-Wrap Software shall be warranted by the Supplier as specified in the End User Licence Agreement. Optisoft does not warrant third party Shrink-Wrap Software which Optisoft supplies "as is".
- 12.5. To the extent permitted by law all other warranties, whether oral or written, express or implied by law, custom or otherwise including, but not limited to any warranties of fitness for purpose, merchantability, description and quality, are hereby excluded.

13. INTELLECTUAL PROPERTY CLAIMS

- 13.1. Optisoft shall defend at its own expense any action, suit or proceedings brought against you alleging that use of the Software in accordance with this Agreement infringes the intellectual property rights of a third party ("Intellectual Property Claim") and Optisoft shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that:
 - 13.1.1. you notify Optisoft in writing immediately you become aware of an infringement or alleged infringement; and
 - 13.1.2. you make no statement or admission without Optisoft's prior written consent and permit Optisoft the sole conduct of any defence or negotiation; and
 - 13.1.3. you provide Optisoft with reasonable assistance in respect of the Intellectual Property Claim; and
 - 13.1.4. you permit Optisoft, at Optisoft's sole discretion, to modify or replace the infringing part of the Software such that it becomes non-infringing without thereby materially detracting from the performance of the Software or to procure for you the right to continue to use the Software or infringing part thereof, and
 - 13.1.5. in the event that none of the remedies set forth in Sub-clause 13.1.4 is deemed by Optisoft to be reasonably practicable, Optisoft shall have the right to terminate this Agreement forthwith upon written notice and repay the corresponding portion of the Licence Fee, as normally depreciated, and the proportion of Annual Support Charges, or new release fees, as appropriate, which relate to the annual period after the effective date of termination.
- 13.2. Optisoft shall have no liability for any Intellectual Property Claim where the infringement or alleged infringement arises from or is incurred by reason of:
 - 13.2.1. the combination, or use of the Software with any equipment or software not supplied by Optisoft; or
 - 13.2.2. Your use or possession of the Software which is not in accordance with the provisions of this Agreement, including but not limited to any amendment or modification to the Software by you or any third party; or
 - 13.2.3. any specification, design or instruction given by you to Optisoft; or
 - 13.2.4. the use of the Third-Party Shrink-Wrap Software, which shall be subject to any indemnity or other protection provided by the Supplier upon the terms of the End-User Licence Agreement.
- 13.3. The foregoing states the entire liability of Optisoft with regard to infringement of any intellectual property right by the use or possession of the Software by you.

14. LIMITATIONS OF LIABILITY

- 14.1. Optisoft shall accept the following liability:
 - 14.1.1. unlimited liability for death or personal injury, to the extent caused by the negligent error or omission, breach or default, of Optisoft;
 - 14.1.2. for direct physical loss or damage to your tangible property or for any liability to you whether in contract or tort up to an amount in aggregate of one hundred and fifty per cent (150%) of the monies paid to Optisoft by you under the Contract, where, and to the extent that such loss or damage is caused by the negligent error or omission, breach or default, of Optisoft.
- 14.2. in no event will Optisoft be liable for any consequential, indirect or special loss or damage howsoever arising, including, but not limited to, loss of profits, loss of data, loss of anticipated savings, loss of business, loss of revenue, or loss arising from any delay or loss of goodwill.
- 14.3. The parties acknowledge and agree that the limitations contained in this clause 14 are reasonable in the light of the circumstances.
- 14.4. The parties expressly agree that should any limitation of liability or provision contained in this Clause 14 be held to be invalid under any applicable statute or rule of law it shall, to that extent be deemed omitted, but if Optisoft thereby becomes liable for loss or damage which would otherwise have been excluded or limited, as the case may be, such liability should be subject to the other applicable limitations and provisions set out herein.
- 14.5. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

15. TERMINATION

- 15.1. Optisoft may terminate this Agreement forthwith on giving notice in writing to you if:
 - 15.1.1. you commit any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 14 days after the receipt of a request in writing from Optisoft to do so, to remedy the breach (such request to contain a warning of Optisoft's intention to terminate); or
 - 15.1.2. you convene any meeting of creditors or pass a resolution for winding up or suffer a petition for winding up or have an administrative receiver or receiver appointed over the whole or part of your assets or suffer the appointment of an administrator or goes into liquidation or, where you are an individual, you are declared bankrupt; or
 - 15.1.3. you permanently discontinue the use of the Software.
- 15.2. The Software Support shall automatically terminate at the end of the then current support period if you do not renew support for the next following support period, such renewal to be evidenced by payment of the Annual Support Charge in accordance with clause 11.2 of this Agreement.
- 15.3. In the event of termination of this Agreement, you shall return within fourteen (14) days of termination any part of the Equipment for which payment has not been made in full and title transferred, all copies of the Software and any documentation, modifications, enhancements and corrections thereof to Optisoft (the "Returned Items"). You shall supply upon request a completed certificate of return, certifying that all Returned Items have been returned to Optisoft.
- 15.4. You hereby grant to Optisoft a licence to enter your premises for the purpose of recovering any Returned Items which you fail to return promptly to Optisoft following termination of this Agreement.
- 15.5. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 15.6. Clauses 6, 13 and 14 shall survive termination of this Agreement.

16. DATA PROTECTION

- 16.1. The parties undertake to comply with the provisions of the GDP Act 2018 ("the DPA") and GDPR and any related legislation in so far as the same relates to the processing of Personal Data, as defined under the DPA, arising out of the provisions and obligations of this Agreement.

17. WHOLE AGREEMENT

- 17.1. This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, representations, proposals, arrangements, undertakings and communications whether oral or written, express or implied between the parties regarding the subject matter hereof to the extent permitted by law.

18. NOTICES

- 18.1. All notices under this Agreement shall be in writing.
- 18.2. Notices shall be deemed to have been duly given:
 - 18.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal office hours of the recipient; or
 - 18.2.2. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
 - 18.2.3. on the second business day following mailing, if mailed by first class post
 - 18.2.4. In each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.
- 18.3. All notices, including notices of termination, shall be addressed to the Company Secretary or nominated representative or, where you are an individual, to you.

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19. THIRD PARTIES

- 19.1. None of the terms of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

20. GENERAL

- 20.1. You shall not assign or otherwise transfer this Agreement or any part hereof to any third party without the prior written consent of Optisoft.
- 20.2. No delay, neglect or forbearance by either party in enforcing any of its rights under this Agreement shall be deemed to be a waiver of such rights.
- 20.3. If any provision of this Agreement is judged by a court to be unlawful, void or unenforceable at law then such provision shall be severed and the remainder of the Agreement shall continue in full force and effect.
- 20.4. No action regardless of form arising out of this Agreement may be brought by either party more than two years after the party concerned becomes aware should reasonably have become aware of the facts constituting the cause of action.
- 20.5. Neither party shall be liable for delay or failure to perform any of its obligations under this Agreement if such delay or failure results from any circumstance beyond its reasonable control including any delay or failure of any supplier or sub-contractor.
- 20.6. In the event of any conflict or ambiguity between the terms and conditions and any schedules attached hereto, the terms and conditions shall prevail.
- 20.7. The Laws of England shall govern this Agreement and the parties agree to submit to the exclusive jurisdiction of the Courts of England.