

TERMS AND CONDITIONS

1. Definitions:

- (a) "Agreement" means these terms and conditions and the Software Maintenance and Support Agreement.
- (b) "Charges" means the amount payable by the Customer, as stated in the Invoice.
- (c) "M&S" means Updates, Upgrades and Technical Support in relation to the Supported Software.
- (d) "Monthly Subscription Charges" means the recurring fixed charge payable on a monthly basis to ASPL for the Term of this Agreement as set out under paragraph (A) of the Agreement.
- (e) "Level 1 Support" has the meaning ascribed to it in Clause 4(c).
- (f) "Supported Software" means the software(s) specified in paragraph (A) of the Agreement that the Customer has licensed from ASPL or an authorized distributor.
- (g) "Technical Contact" has the meaning ascribed to it in Clause 4(a).
- (h) "Technical Support" has the meaning ascribed to it in Clause 3(b).
- (i) "Term" means the term of this Agreement as set out under paragraph (D) of the Agreement.
- (j) "Upgrade" means enhancements and/or new functionalities in the Supported Software that are incorporated in a new release of the Supported Software. For example, the change from version 1.X to version 2.X shall be considered an Upgrade.
- (k) "Updates" means bug fixes and/or fixes of minor errors in the Supported Software that are incorporated in a new release of the Supported Software. For example, the change from version X.01 to version X.02 or the change of version X.10 to X.20 shall be considered an Update.

2. Agreement Structure: This Agreement is made up of (i) these terms and conditions and (ii) the Software Maintenance and Support Agreement.

3. Responsibilities of ASPL:

- (a) ASPL shall provide the Customer with M&S for the Supported Software during the Term of this Agreement and in consideration, the Customer will pay the Charges to ASPL in accordance with this Agreement.
- (b) ASPL shall provide technical support in relation to the Supported Software via telephone, email or a remote medium according to ASPL's discretion, other than Level 1 Support specified in Clause 4(c) below ("Technical Support").
- (c) In the event that a resolution of the technical issue, in the judgment of ASPL, is not possible via telephone, email or any other remote medium, ASPL shall dispatch a reasonably competent service technician to attend to the affected Supported Software during regular business hours of ASPL i.e. Mondays to Fridays (public holidays excepted) from the hours of 8.30am to 5.30pm and if requested by the Customer, such technician, subject to availability, shall attend outside the regular business hours of ASPL subject to payment by the Customer of the overtime rates (if any) for the technician and transport charges. However, ASPL provides no warranty that any Supported Software(s) shall be restored to working order by any particular time.
- (d) ASPL shall make available all Updates for the Supported Software to the Customer. Further, during the Term of this Agreement, installation of Updates will be included as part of M&S provided by ASPL.
- (e) ASPL shall make available all Upgrades for the Supported Software to the Customer. Further, during the Term of this Agreement, installation of Upgrades will be included as part of M&S provided by ASPL.
- (f) During the Term of this Agreement, ASPL will support the current Upgrade (and related Updates) and the most recent prior Upgrade (and all related Updates). For example, if the last five releases were 4.3, 5.0, 5.1, 6.0 and 6.1, ASPL would support 5.0, 5.1, 6.0 and 6.1, but not 4.3. Notwithstanding the foregoing, ASPL shall have no obligation to support a bug, error or other issue if (i) such bug, error or other issue has been corrected in a subsequent release (Update or Upgrade) of the Supported Software; and (ii) such subsequent release (Update or Upgrade) has been provided to the Customer pursuant to the terms and conditions of this Agreement.
- (g) ASPL shall provide a list/ table of relevant Activation License Key(s) in relation to the Supported Software to the Customer.

4. Responsibilities of Customer: The Customer shall:

- (a) designate two primary individuals (each a "Technical Contact") to serve as the liaison between the Customer and ASPL. The designated Technical Contacts shall be the sole liaison between the Customer and ASPL for M&S. The Customer may change the identities of Technical Contacts from time to time upon reasonable prior written notice to ASPL;
- (b) immediately install and use any Upgrade or Update to the Supported Software provided by ASPL during the Term of this Agreement;
- (c) always contact its authorised distributor (if applicable) for assistance in operating the Supported Software ("Level 1 Support") during such hours and by such methods as are established by such distributor;
- (d) permit the personnel authorized by ASPL at all reasonable times to enter or otherwise have access (including remote access) to the Supported Software(s) for the purpose of performing ASPL's obligations hereunder;
- (e) permit ASPL to install any software or monitoring device(s) within the Customer's premises as ASPL deems fit to have access to and monitor the Supported Software(s) via the internet or any medium as ASPL deems fit; and
- (f) co-operate with ASPL, provide information and documentation, make available its facilities without charge and ensure that its staff and agents co-operate and provide assistance as ASPL requires during the performance of the M&S services.

5. Restriction and Exclusions: New versions of any Supported Software, such as versions for new operating systems, are not considered an Update or Upgrade and are not within the scope of this Agreement, and will not be provided by ASPL under M&S.

6. Charges: The Customer undertakes to pay all charges as set out in paragraphs (A) and (B) (if applicable) of the Agreement according to the Terms of Payment as set out in paragraph (C) of the Agreement. The Customer shall notify ASPL in writing if it has any objection relating to the Invoice within 30 days from the date of Invoice, failing which, such Invoice shall be deemed to have been irrevocably accepted by the Customer as true and correct. Any Invoice not paid in accordance with paragraph (C) of the Agreement shall bear interest at the compounded rate of 1.5% per month, for each day that such Invoice remains unpaid, up to and including the day payment is made.

7. Tax: The Customer shall pay all Taxes or reimburse ASPL for the payment of all Taxes, as the case may require, in all manners and within such period as to comply or to enable ASPL to comply with any applicable orders or directives of the authorities and the relevant laws and regulations.

8. Review of Charges: ASPL reserves the right to vary the Charges, or the basis thereof, at any time upon 30 days prior written notice. However, if during any one calendar year, the Charges are increased by ASPL (whether by one or more separate variations) by more than 10% the Charges payable on 1st January of that year; the Customer shall be entitled to terminate this Agreement by giving not less than 30 days prior written notice to ASPL.

9. Force Majeure: ASPL shall not be liable for failures or delays in performing its obligations hereunder arising from any cause beyond its reasonable control, including but not limited to acts of Gods, acts of civil or military authority, fires, restrictions, wars, riots, earthquakes, storms, typhoons and floods and in the event of any such delay the time for ASPL's performance shall be extended for a period equal to the time lost by reason of the delay which shall be remedied with all due dispatch in the circumstances.

10. Termination

- (a) Notwithstanding paragraph (D) of the Agreement and without prejudice to the rights or remedies which ASPL may have against the Customer, ASPL shall have the right at any time by giving notice in writing to the Customer to terminate this Agreement forthwith in any of the following events:
 - (i) if the Customer commits a breach of any of the terms and conditions herein;
 - (ii) if the Customer does not pay the Charges within the payment term stated in paragraph (C) of the Agreement; or

- (iii) if the Customer becomes insolvent or if an order is made or a resolution is passed for the winding up of the Customer or if an administrator, receiver or judicial manager is appointed in respect of the whole or any part of the Customer's assets or business, or if the Customer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.
- (b) Notwithstanding paragraph (D) of the Agreement, ASPL shall have the right to terminate this Agreement by giving to the Customer not less than 30 days' written notice of termination.

11. Suspension: Without prejudice to the right of ASPL to terminate this Agreement at any time by giving notice pursuant to Clause (10) above, if the Customer does not pay the Charges within the Terms of Payment in Paragraph (C) of the Agreement, ASPL shall have the right at any time by giving notice in writing to the Customer to immediately suspend the provision of M&S and all other maintenance and services under this Agreement until ASPL receives payment of the Invoice. During such period of suspension, the obligations of the Customer under this Agreement shall continue and remain in full force and effect.

12. Consequences of Termination: In the event of premature termination of this Agreement, the Customer shall forthwith pay to ASPL a sum equal to (a) all outstanding Charges which are due and payable as at the date of such termination in respect of the Supported Software(s), plus the monthly subscription charge(s) for the unexpired term of this Agreement as at the date of such termination in respect of the Supported Software(s).

13. Limitation of Liability

- (a) In the event ASPL is under any circumstance liable for any defect or deficiency in the services or any performance of or lack of or delay in performance with respect to the services to be provided under this Agreement, ASPL's only liability shall be (at the election of ASPL in its sole discretion) to repeat the performance of the services to the best of its ability within a reasonable time. Save as expressly set forth above, ASPL shall not be liable to the Customer for any loss or damage arising out of or in connection with any breach by ASPL of this Agreement, or in tort (including negligence) or breach of statutory duties, or arising out of or in connection with the performance of or lack of or the delay in the performance of any services or the state, condition, use, application and/or exploitation of any item or any matter whatsoever, save for death or personal injury resulting from the negligence of ASPL.
- (b) Notwithstanding anything to the contrary herein, ASPL shall not be liable for any consequential or indirect loss or damage (including without limitation loss of profits, loss of business or loss of goodwill) arising out of or in connection with the matters aforesaid or any matter whatsoever.
- (c) In no event shall ASPL be liable for any damages whatsoever whether direct, indirect, consequential, incidental, special or punitive (including without limitation lost revenues, profits or data) that are directly or indirectly attributable to the use of or the inability to use the service and/or Supported Software(s) including without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, whether liability is based on breach of contract, breach of warranty (express, implied or otherwise) or otherwise, and whether asserted in contract, tort (including negligence and strict liability) or otherwise, and irrespective of whether ASPL has been advised of the possibility of such damages or if such damages were foreseeable.
- (d) Without prejudice to the foregoing, and to the extent permitted under the law, ASPL's liability for any cause under or relating to these terms and conditions shall not exceed the aggregate sum equal to the Charges payable under the terms and conditions during the contracted period prior to the time the cause of action arose.

14. Limitations/Exclusions: Notwithstanding anything else contained herein, the provision of M&S in respect of the Supported Software(s) under this Agreement at any time, whether during or after any applicable warranty period, shall be subject to the following:

- (a) For the avoidance of doubt, ASPL reserves the right not to provide maintenance and other services under this Agreement for any of the following:
- (i) compatibility of any software or hardware with any computer or other equipment;
 - (ii) troubleshooting of software (including LAN/WAN systems and/or application software programs) whether or not purchased from ASPL and hardware not purchased from ASPL;
 - (iii) LAN/WAN systems purchased from ASPL (which shall be warranted by a separate maintenance contract; if any);
 - (iv) computer maintenance and cleaning;
 - (v) virus prevention and eradication;
 - (vi) recovery of crashed or deleted software programs or data;
 - (vii) software maintenance or hardware configuration, customization or training
 - (viii) the Customer alters the Supported Software(s) by any persons other than ASPL and its authorized representatives;
 - (ix) damage due to Customer's negligence, alteration, unauthorized repair, installation, upgrade or acts of God; or
 - (x) any configuration of Customer settings if ASPL is aware or has reason to believe that the Customer is using any software without a valid license.
- (b) ASPL takes no responsibility for any data belonging to the Customer that may be processed by the Supported Software.

15. Transfer and Assignment: The rights and obligations of the Customer arising out of this Agreement shall not be assigned or transferred by the Customer without the prior written consent of ASPL. ASPL may assign this Agreement or any portion thereof, or subcontract any responsibility hereunder.

16. Notices and Service: All notices and other communication required or made hereunder shall be in writing and delivered personally or sent by prepaid registered post to the intended recipient at its address set out above (or to such other address as a party may from time to time notify the other). Any such notice or communication shall be deemed to have duly served (if delivered personally) immediately or (if given or made by letter) 48 hours after posting and in proving the same it shall be sufficient to show that the envelope containing the same way duly addressed, stamped and posted.

17. Governing Law: This Agreement shall be governed by, and construed in accordance with the laws of Singapore and in relation to any legal proceedings arising out of or in connection with this Agreement ("Proceedings"), the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Singapore and waive any objection to Proceedings in any such courts on grounds that the Proceedings have been brought in an inconvenient forum.

18. Amendments: This Agreement contains the entire agreement between ASPL and the Customer may not be modified or amended unless such modification or amendment is approved in writing by the duly authorized representatives of the parties, provided that in the case of ASPL, such authorized representative shall be a person holding the office of general manager or his superior.

19. Confidentiality: The Customer shall keep confidential and shall not at any time during the Term and within one year from the expiry or termination of this Agreement disclose or permit to be disclosed the terms of this Agreement, or any negotiations discussions or agreements for a renewal of this Agreement, or any matter in relation to this Agreement, except with the prior written consent of ASPL or as required by law or to the extent that such information has become public knowledge not due to the Customer's breach of this undertaking.

20. Breach of Contract: In the event of any breach by Customer of the terms and conditions stated in this agreement, ASPL, reserves the right to seek recourse for any damages.

21. Exclusion of Contracts (Rights of Third Parties) Act: A person who is not a party to this Agreement may not enforce any of its terms under The Contracts (Rights of Third Parties) Act (Cap 53B) and notwithstanding any term of this Agreement, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of this Agreement.