

# MAINTENANCE AND SUPPORT SERVICES

## Part 1: Supplier Software Services

### 1. DEFINITION OF TERMS

For the purposes of this Section B, the following definitions shall apply;

- 1.1 "Business Hours" are 09:00 to 17:30 (GMT) Monday to Friday (excluding English bank and public holidays).
- 1.2 "Outside Business Hours" are 17:30 to 09:00 (GMT) Monday to Friday and all-day Saturday, Sunday and on English bank and public holidays.
- 1.3 "Service Availability" 99.9% and is measured 24x7x365.
- 1.4 "Hosting Services" refers to the Service elements that the Supplier is responsible for and the provision of the server infrastructure to run these services.
- 1.5 "ACI Suite" refers to the Supplier Software provided under this agreement.
- 1.6 "Authorised Users" means those employees and contractors of the Customer who DAS has expressly agreed can access the System.
- 1.7 "Service Request" (SR) refers to a user request for information or advice, or for a standard change (a pre-approved change that is low risk, relatively common and follows a procedure) or for access to an IT service.
- 1.8 "Key Performance Indicator" (KPI) is a measurable value that demonstrates how effectively a company is achieving key business objectives.
- 1.9 "Service Targets" (SLT) monitor the availability of a Business Service or Configuration Item (CI), such as a service, application, hardware, software, or other infrastructure component. SLTs report any change to the availability of the CI in change requests, changes, tasks, and incidents.
- 1.10 Service – the Licensed Programs as defined in the Software Order

### 2. MAINTENANCE

2.1 Supplier shall proactively:

- a) Manage and maintain the ACI installation and associated supporting software.
- b) Provide any required Hosting Services; in each case to minimise issues logged by the Customer.

2.2 Maintenance of the ACI Suite and the Hosting Services that may require interruption of the Support Services ("Maintenance Events") may be planned ("Planned Maintenance Event") or unplanned/emergency ("Unplanned Maintenance Event"). Whilst the Supplier shall at all times use all reasonable endeavours to keep any such interruptions to a minimum, the Customer acknowledges that this may not always be possible.

2.3 Planned Maintenance Events involve scheduled maintenance work and might include:

- a) installing new servers,
- b) moving servers, maintenance of the hosted platform
- c) maintenance to the operating system on the hosted service,
- d) all regularly scheduled error corrections and upgrades.

2.4 All work for the purposes of planned Maintenance events shall take at a mutually agreed. The Supplier shall give the Customer 3 days' prior written notice of any planned Maintenance Events.

2.5 Unplanned Maintenance Events involve unscheduled or emergency maintenance work to ensure that services are fully available with all the functionality and performance that the Customer is contractually entitled. In addition to the examples of Maintenance Events given in paragraph 2.3 above, such work might also include the fixing of bugs or dealing with denial of service attacks.

2.6 The Supplier may interrupt the services to undertake work in relation to Unplanned Maintenance Events at any time although the Supplier shall endeavour to undertake such work during the daily window of 10.00 pm to 2.00 am

(GMT). Supplier shall inform the Customer as soon as is reasonably practical if Unplanned Maintenance is being carried out.

2.7 Unplanned Maintenance Events reported by the Customer to Supplier, shall be considered downtime for the purpose of service availability measurement under this MSS.

2.8 Any downtime associated with the Customer Hardware and operating environment will be excluded from any service availability calculations.

### **3. SUPPORT SERVICES**

3.1 The Supplier shall provide a range of Support Services under this agreement. Support Services provided under this Agreement:

#### **3.2 Service Desk:**

- a) The Customer shall provide its own first-line support to users. However, the Customer may contact the Service Desk to report problems from users that the Customer cannot resolve itself after it has performed a reasonable level of diagnosis.
- b) The Customer shall also provide its own support for Supplier approved data integration tools and processes developed or maintained by the Customer in order to connect the ACI Suite to the Customer's other software and databases.
- c) A Service Desk shall be provided by the Supplier for all production applications to be supported. The Service Desk is the single point of contact for all Incidents, information or service requests for Customers.
- d) The Supplier will make available to the Customer a Service Management tool to enable issue logging and tracking. Access will include telephone, email and web portal support during Business Hours for issues relating to the correct operation of the Supplier Software.
- e) Outside Business Hours the Customer may contact the Supplier's Out of Hours (OOH) engineers to provide support, subject to the Customer paying the Supplier its then current rates for this OOH service. OOH support is only available via the telephone for Priority 1 issues.
- f) The Service Desk shall use reasonable endeavours to process support requests, issue tracking numbers, determine the source of the issue and respond to the Customer.
- g) The Service Desk shall respond to all support requests from the Customer within the specified time in Appendix A. All requests / issues shall be recorded in the Service Management tool.
- h) The Supplier shall provide the Customer with access to a second line customer support Service Desk (the "Service Desk")
- i) The Service Desk is committed to delivering quality Customer service by:
  - Striving to ensure Customer satisfaction,
  - Responding to requests for support within published time frames,
  - Continuously working to improve the quality of service.

#### **3.3 Service Request Management:**

The term Service Request (SR) refers to common Customer requests such as installations, information, additions and changes.

- a) Service Request Catalogue Items shall have defined workflow, approvals, expected times and guidance on charges.
- b) The Customer must log their SR as early as possible prior to the required delivery date.
- c) Examples of a SR include:
  - Software installation requests including new applications;
  - Data uploads / downloads,
  - How do I? / Training,
  - Reporting,
  - Information request.

### 3.4 Incident Management:

The process is to restore normal service operation as quickly as possible minimizing the adverse impact on business operations, thus ensuring that the best possible levels of service quality and availability are maintained.

- a) Incidents are pre-assigned a priority to give clients an expectation regarding the completion time for Incidents. Priorities, Respond and Resolutions times are detailed at Appendix A.
- b) A 'Major Incident' is an incident with a level of urgency and impact meaning that it requires a higher level of monitoring and communication to ensure resolution is reached as fast as possible.
- c) Incident Management includes any event which disrupts, or which could disrupt, a service. This includes events which are communicated directly by the clients, either through the Service Desk or Self-Service portal.
- d) The objectives of the Incident Management Process are:
  - To restore normal service operation as quickly as possible and minimize the adverse impact on business operations,
  - Provide clients with a consistent high-quality experience during the Incident Management process,
  - Provide better communication during the Incident Management process,
  - Adopt a single standard process and tool based on industry best practices,
  - Improve Customer satisfaction with the overall Incident Management process,
  - Define and measure the critical KPIs that will drive improvement in the processes,
  - Resolution is the application of either a solution to the incident or a functional work-around.

### 3.5 Problem Management:

The Problem Management process is to eliminate recurring incidents & minimize incidents that cannot be prevented

- a) Problems are pre-assigned a priority to give clients an expectation regarding the completion time. Priorities, Respond and Resolutions times are detailed at Appendix A.
- b) Root-cause analysis. Problems will be reviewed to determine their root cause and measures will be taken to correct the source of the problem, where they can be identified.
- c) Bug fixes—Defined as the emergency repair of any system. This includes system errors or unexpected results within the system that render it unusable for the purpose for which it was designed.
- d) The objectives of the Incident Management Process are:
  - Preventing problems and resulting incidents from happening,
  - Eliminating recurring incidents,
  - Minimizing the impact of incidents that cannot be prevented.

### 3.6 Software Change Request:

Software Change Request (SCR) refers to a type of Service Request Catalogue item. These requests are typically low volume but of high business importance for their Customer. Examples of an SCR are as follows:

- Core Software functionality change;
- Designing or building reporting sets for an application; and
- Third Party Integration

## 4. SERVICE AVAILABILITY

4.1 Calculation of Downtime: Downtime' is calculated in minutes from the time that the Customer notifies the Supplier and Supplier verifies that the Customer is experiencing a Priority 1 Incident, to the time that Supplier notifies the Customer that such fault has been rectified or the Service has been restored with an acceptable business workaround.

4.2 Uptime Service Level

- a) Supplier shall provide at least a 99.9% uptime service availability level ("**Uptime Service Level**"). This Uptime Service Level does not include:
  - I. planned Maintenance Events;
  - II. unplanned Maintenance Events causing Downtime that the Customer does not report to Supplier;
  - III. Customer-caused or third party-caused (save for a third party appointed by the Supplier) outages or disruptions however caused, or outages or disruptions attributable in whole or in part to other events

beyond Supplier’s reasonable control (including downtime caused by failure of the Customer Hardware, telecommunications that provide connectivity to ACI from a public or other private network such as the Internet and any act or omission of the Customer and its group of companies and their respective directors, employees, servants and agents).

## 5. AVAILABILITY MEASUREMENT AND REPORTING

5.1 Availability measurement shall be carried out by the Supplier

5.2 Availability is calculated at the end of each month in accordance with the following formula:

$$A = \frac{T - D}{T}$$

Where:

“A” means the availability of the Service (expressed as a percentage).

“D” means the number of minutes of Downtime (as defined in paragraph 4 above). monitored by Supplier in the respective month.

“T” means the total number of minutes in the respective month.

## 6. PRIORITY LEVEL RESPONSE TIMES.

6.1 The required initial telephone response times are for the individual priority ratings. All times indicated represent response times during specified working hours. The indicated response time represents the maximum delay between an incident/request being reported to Service Desk and a DAS representative acknowledging the incident via the logging tool.

## 7. ADDITIONAL INFORMATION.

7.1 GDPR: In order to work on certain issues/problems/service requests it may be necessary for the Supplier to retrieve a copy of the Customers ACI database to DA Systems. The Supplier will require the Customers express written permission each time this happens. The Supplier shall undertake to delete the data as soon as practical after the activity on the specific task has been completed.

### Appendix A

The Supplier shall determine the priority based on the definitions, using one of following priorities:

Table 1

Incident Priority Definitions			
Priority	Description	Response time	Resolution Service Target
<b>Priority 1</b> (Urgent)	A major system component (i.e. ACI, ACI Net, NX Transport) is “down” or inaccessible to a significant number of users causing a severe business impact. Priority 1 incidents shall be reported by telephone only.	Within 1 hour.	Within 4 hours.
<b>Priority 2</b> (High)	A major component of the Service is not operating correctly and is causing a significant business impact i.e. work cannot reasonably continue for more than 10% of authorised users or a specific critical business process is affected. Priority 2 incidents shall be reported by	Within 1 hour.	Within 2 Business Days

	telephone only.		
<b>Priority 3 (Medium)</b>	Certain features of the Service are impaired while most major components of the Service remain functional and business impact is minimal.	Within 1 hour.	Within 5 Business Days after initial response.
<b>Priority 4 (Low)</b>	Errors that are, non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Services.	Within 1 hour.	Next release of ACI

**Table 2**

<b>Problem Priority Definitions</b>			
<b>Priority</b>	<b>Description</b>	<b>Root Cause Identification</b>	<b>Target resolution time</b>
<b>Priority 1 (Urgent)</b>	A major system component (i.e. ACI, ACI Net, NX Transport) is “down” or inaccessible to a significant number of users causing a severe business impact. Priority 1 incidents shall be reported by telephone only.	1 Business Days	2 Business Days
<b>Priority 2 (High)</b>	A major component of the Service is not operating correctly and is causing a significant business impact i.e. work cannot reasonably continue for more than 10% of authorised users or a specific critical business process is affected. Priority 2 incidents shall be reported by telephone only.	3 Business Days	Within 10 Business Days
<b>Priority 3 (Medium)</b>	Certain features of the Service are impaired while most major components of the Service remain functional and business impact is minimal.	20 Business Days	Within 40 Business Days
<b>Priority 4 (Low)</b>	Errors that are, non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Services.	40 Business Days	Next release of ACI

Supplier

<b>Supplier Service Target Reporting</b>			
<b>Service</b>	<b>KPI Description</b>	<b>Description</b>	<b>Service Target</b>
<b>Incident Management</b>	Initial Response Time within SLA	Average time taken between the time a user reports an Incident and the time that the Service Desk responds to that Incident	95%
	Incident Resolution within SLA	Rate of incidents resolved during solution times agreed in SLA	90%
<b>Service Availability</b>	Service uptime	Service availability during the month	99.9%

Service Request Catalogue Items that may incur a Charge. The Charge may be present in the Service Request Catalogue or by negotiation could be managed on a Time and Materials basis.

## Example of a Service Request Catalogue:










### DA Systems Service Desk

Welcome! You can raise a DA Systems Service Desk request from the options provided.

Contact us about

Submit a Service Request ▼

#### What can we help you with?

-  **Software Change Request**  
Request for new functionality in the system
-  **Request for Information**  
Request for Information
-  **Report**  
Request for new or changes to reports
-  **Licence Increase / Decrease**  
Request a licence increase or decrease
-  **License Renewal**  
If you have an issue with renewing your license please use this service.
-  **Data Import / Data Change**  
Request to import or change data in your system
-  **User Admin**  
User Admin change etc passwords/User set up
-  **Training**  
Request for Training
-  **Invoice / Driver Batch Rollback**  
Do you need to roll back a batch invoice

# DA SYSTEMS – ACI STANDARD TERMS AND CONDITIONS v1c

## DA SYSTEMS LIMITED – ACI STANDARD TERMS AND CONDITIONS (“Conditions”) Version 1c

These are the Conditions of DA Systems Limited (“DAS”) which may be updated from time to time by notification in writing. Where there is any inconsistency between the provisions hereof and an Order (defined below), the provisions of the Order will apply. These Conditions together with the applicable Order will govern continuing business between the Customer and DAS in relation to the subject of that Order. Each Order shall constitute a separate contract.

### 1. Interpretation

1.1 In the Agreement, unless the context otherwise requires, the following expressions have the following meanings:-

“Acceptance” means the date on which the Program Materials are accepted (or deemed to be accepted) by the Customer pursuant to Conditions 4.2 to 4.5 (in respect of a Software Licence Order) or the date on which the Development Materials are accepted (or deemed to be accepted) by the Customer pursuant to Condition 5.3(b) (in respect of a Development Services Order) and “Accepted” shall be construed accordingly.

“Acceptance Certificate” means a receipt of delivery and acceptance certificate in the form annexed to the Agreement whether in relation to the Acceptance of the Licensed Programs or the Development Software.

“Acceptance Tests” means testing of either the Licensed Programs in accordance with Condition 4 and a Software Licence Order or the Development Software in accordance with Condition 5.3 and a Development Services Order.

“Additional Charges” means the charges and expenses set out in an Additional Services Order or as otherwise calculated in accordance with the scale of charges of DAS from time to time.

“Additional Services” means any services additional to the Development Services, Training and the Maintenance Services, including any bespoke programming requests or other ad-hoc work or services identified in an Additional Services Order.

“Agreement” means an agreement subject to a signed Order and incorporating these Conditions, whether for a licence of the Licensed Programs or the provision of any or all of the Development Services, Training, Maintenance Services or Additional Services.

“Charges” means the Licence Fee, the Development Fees, Training Fees, Maintenance Fee and Additional Charges.

“Contract Period” means the period of time described in the Order.

“Customer” means that person identified as such in the Order.

“Customer’s Data” means the Customer’s own data relating to its customers.

“Customer’s Items” means the Customer’s hardware, software (including operating system), communication and data transmission lines and/or peripherals identified in the Order and/or the Specification.

“Development Documentation” means any specifications, user guides and other information and material made available from time to time in connection with the Development Software during the Agreement by DAS in either printed or machine readable form.

“Development Fees” means the sums payable by the Customer in respect of Development Services as set out in a Development Services Order.

“Development Materials” means the Development Software and the Development Documentation.

“Development Materials Acceptance Date” means the date set out in a Development Services Order.

“Development Materials Delivery Date” means the estimated delivery date, specified in a Development Services Order, on which DAS will deliver the Development Documentation to the Customer.

“Development Services” means the development services to be provided by DAS in relation to the Development Software pursuant to a Development Services Order.

“Development Software” means the software to be corrected, developed, enhanced, modified, up-graded, or otherwise changed by DAS for the Customer pursuant to a Development Services Order.

“Development Specification” means the specification of the Development Software agreed between the parties and set out in a Development Services Order.

“Intellectual Property Rights” means patents, rights in utility models, semiconductor topography rights, copyright, database rights, domain names, rights in confidential information (including, without limitation, know how and trade secrets) and any and all other intellectual property rights and sui generis rights and other similar rights (whether now subsisting or in the future created) both in the United Kingdom and all other countries of the world for the full period for which those rights subsist (including any and all extensions and renewals and all vested, future and contingent rights and rights under licences) and all applications for the foregoing.

“Licence Fee” means the annual fee due to DAS pursuant to a Software Licence Order.

“Licensed Programs” means all software programs, in machine-readable object code, supplied by DAS and described as such in a Software Licence Order (including all Maintenance Updates generally made available by DAS) with the exception of any Third Party Software.

“Licensed Programs Delivery Date” means the date set out in the Order that the Licensed Programs are to be installed by DAS.

“Location(s)” means the areas set out in the Order.

“Maintenance Fee” means the sums payable by the Customer in respect of Maintenance Services as set out in a Maintenance Services Order.

“Maintenance Services” means the maintenance services to be provided by DAS in relation to the Licensed Programs pursuant to a Maintenance Services Order.

“Maintenance Update” means any modified or corrected version of any of the Licensed Programs or Program Documentation from time to time issued by DAS.

“Order” means an order form of DAS to which these Conditions are annexed. An “Order” may be any or all of a Software Licence Order, a Development Services Order, a Maintenance Services Order or an Additional Services Order corresponding to Use of the Program Materials and/or the Development Materials and/or the provision of any or all of the Development Services, the Maintenance Services and the Additional Services.

“Program Documentation” means any specifications, user guides and other information and material made available from time to time in connection with the Licensed Programs during the Agreement by DAS in either printed or machine readable form.

“Program Materials” means the Licensed Programs and the Program Documentation.

“Services Levels” means the levels of service specified in the Service Level Agreement attached to a Maintenance Services Order.

“Specification” means the description of the functionality and facilities of the Licensed Programs as described in the “Functionality Document” of DAS as at the date of the Agreement.

“Third Party Software” means the software identified as such in the Order and supplied by third parties.

“Training” means training to be provided by DAS pursuant to a Training Order. For the avoidance of doubt, this shall not include training other than as set out in the Order.

“Training Fees” means the price for Training calculated in accordance with the scale of charges of DAS from time to time.

“Use” means as defined in Condition 2.1.

1.2 The headings in these Conditions are for ease of reference only and shall not affect the construction or interpretation of the Agreement.

1.3 Words denoting the singular meaning include the plural and vice versa unless the context otherwise requires.

1.4 Words of any one gender include the other gender and may be used interchangeably and words denoting natural persons include corporations and firms and all such words are to be construed interchangeably.

1.5 If there shall be any inconsistency between the provisions of the Order and the other provisions of the Agreement then the provisions of the Order shall prevail.



1.6 References to “including” and “include” shall be deemed to mean respectively “including without limitation” and “include without limitation”.

1.7 References in the Agreement to any statute, statutory provision or regulation includes a reference to:-

(a) that statute, statutory provision or regulations as from time to time amended, extended, re-enacted or consolidated whether before or after the date of the Agreement; and

(b) all statutory instruments or orders made pursuant to it.

## **2. Grant of Licence and Provision of Services**

2.1 Subject to the terms of the Agreement and in consideration of the payment of the Licence Fee, DAS hereby grants to the Customer a non-exclusive licence to Use the Program Materials in the Location(s) for the Contract Period. “Use” of the Program Materials means (as appropriate) either the reading and possession of the Program Documentation, or the possession, loading and subsequent processing and operating of the Licensed Programs on the Customer’s Items at the Location(s) for the Customer’s own business purposes.

2.2 Subject to the terms of the Agreement and in consideration of the payment of the Development Fees, the Training Fees, the Maintenance Fee and/or the Additional Charges, DAS hereby agrees to provide respectively the Development Services, the Training, the Maintenance Services and/or the Additional Services to the Customer for the duration of the Agreement.

## **3. Charges**

3.1 The Customer shall pay to DAS the Licence Fee and the Development Fees on the payment dates set out in the Order.

3.2 The Customer shall pay to DAS the Training Fees and Maintenance Fee monthly in advance and the Additional Charges monthly in arrears.

3.3 All Charges shall be paid in full by direct debit within 28 (twenty-eight) days of DAS’s invoice and without any deduction or withholding by way of set-off or counter-claim. If the Customer wishes to dispute a DAS invoice it must do so within 7 (seven) days of the invoice date. Time for payment shall be of the essence.

3.4 All Charges quoted are exclusive of VAT or other applicable sales tax which shall be paid by the Customer at the appropriate rate.

3.5 Charges shall be reviewed with effect from the beginning of each December after the Delivery Date (the "Review Date"). If, upon any such review, the monthly figure given by the General Index of Retail Prices (formerly titled MM23) as published by National Statistics, or any other table (or index) replacing that table most recently published prior to the Review Date shows an increase in relation to the monthly figure last published prior to the date of the Agreement (or, where the sums payable have been increased pursuant to this Condition, prior to the effective date of the last increase), Charges may be increased in the same proportion with effect from the Review Date.

3.6 If any sum payable under the Agreement or any other agreement between the parties is not paid within 28 (twenty-eight) days after its due date (as described in Condition 3.1 or 3.2), then (without prejudice to DAS’s other rights and remedies) DAS reserves the right to:-

(a) suspend the Customer’s right to Use the Licensed Programs;

(b) suspend all or any part of the Development Services, the Maintenance Services, the Training and the Additional Services including the supply by DAS from time to time of the Maintenance Updates;

(c) deactivate the use by the Customer of the Licensed Programs such as to make them inoperable; and

(d) do any of the things referred to in paragraphs (a) to (c) above in respect of any other agreement between the parties.

## **4. Delivery, Installation and Acceptance**

4.1 This Condition 4 applies in relation to a Software Licence Order.

4.2 Subject to Condition 4.9, on the Licensed Programs Delivery Date, or as soon thereafter as is reasonably practical, DAS shall deliver to the Customer a copy of the Licensed Programs and the Customer shall accept such delivery by signing and

returning an Acceptance Certificate to acknowledge such acceptance. The Customer shall be responsible for installation at its own expense of the Licensed Programs and in doing so it shall follow any reasonable instructions given by DAS.

4.3 The Customer shall not unreasonably delay Acceptance or withhold the Certificate and shall only be entitled to reject the Program Materials if they do not operate in accordance with the Specification. The Customer shall be deemed to have Accepted the Program Materials if:-

- (a) DAS has not received the Acceptance Certificate within 14 (fourteen) days of the actual delivery date of the Program Materials; or
- (b) DAS has not received within 14 (fourteen) days of the actual delivery date of the Program Materials the Customer's detailed reasons in writing as to why the Program Materials do not operate in accordance with the Specification (a "Default Notice"); or
- (c) the Customer has used the Program Materials to process "live" data.

4.4 The Customer shall only process "live" data using the Program Materials when it has not Accepted the Program Materials with DAS's prior written consent.

4.5 Within 28 (twenty-eight) days of receipt of a Default Notice DAS shall, at its sole discretion, free of charge replace the Licensed Programs which are defective or fail to operate provided that the defective Licensed Programs shall have been returned to DAS. Any replaced Licensed Programs shall be redelivered to the Customer by DAS free of charge to the Location but otherwise in accordance with and subject to these Conditions whereafter Conditions 4.2 to 4.5 shall again apply.

4.6 For the purposes of allowing DAS to perform its obligations under the Agreement the Customer agrees at its own expense to install, operate and keep fully operational at the Location(s) the Customer's Items prior and subsequent to the Licensed Programs Delivery Date together with such Third Party Software, computer hardware, peripherals, operating systems and other software as DAS may from time to time reasonably require.

4.7 The Customer acknowledges that the Licensed Programs include encoded parameters designed to help prevent use of the Licensed Programs (including as described in Condition 3.6(c)) otherwise than in accordance with the Agreement.

4.8 Where stated in the relevant Order, the Customer shall be responsible for installation at its own expense of the Licensed Programs, and in doing so it shall follow any reasonable instructions given by DAS.

4.9 Time shall not be of the essence in relation to DAS's obligations under this Condition 4.

## **5. Development Services**

5.1 This Condition 5 applies in relation to a Development Services Order.

5.2 Development Services

- (a) DAS shall develop the Development Materials to meet the requirements of the Development Specification.
- (b) When the Development Materials are Accepted and in consideration for the Development Fees, the Customer shall use the Development Materials in accordance with the licence terms set out in the Development Services Order such licence terms reflecting one of the following 3 (three) options:-

Option 1

- (i) A non-exclusive licence from DAS to the Customer to use the Development Materials for the full period of their copyright commencing on and including the Development Materials Acceptance Date.

Option 2

- (ii) A non-exclusive licence from DAS to the Customer to use the Development Materials on the terms of a signed DAS Software Licence Order incorporating DAS's Standard Terms and Conditions Version 1c.

Option 3

- (iii) The Development Materials shall be deemed Program Materials under the Agreement between the parties currently in force and shall be used by the Customer under the licence granted by DAS to the Customer under such agreement.

In the case of each of Options 1 to 3, the chosen scope of licence use is restricted to use of the Development Materials in object code form only for the purposes of processing the Customer's data for its normal business purposes and is otherwise subject to these Conditions. Any use outside of this scope requires DAS's prior written consent and the Customer acknowledges that additional fees may be payable on any change that DAS approves.

### 5.3 Delivery, Installation and Acceptance

(a) Subject to Condition 5.3(g), on the Development Materials Delivery Date, or as soon thereafter as is reasonably practical, DAS shall deliver to the Customer a copy of the Development Materials and the Customer shall accept such delivery by signing and returning an Acceptance Certificate to acknowledge such acceptance. The Customer shall be responsible for installation at its own expense of the Development Software and in doing so it shall follow any reasonable instructions given by DAS.

(b) The Customer shall not unreasonably delay Acceptance or withhold the Acceptance Certificate and shall only be entitled to reject the Development Materials if they do not operate in accordance with the Development Specification. The Customer shall be deemed to have Accepted the Development Materials if:-

(i) on or before the Development Materials Acceptance Date DAS has not received the Acceptance Certificate ; or

(ii) on or before the Development Materials Acceptance Date DAS has not received the Customer's detailed reasons in writing as to why the Development Materials does not operate in accordance with the Development Specification (a "Development Default Notice"); or

(iii) the Customer has used the Development Materials to process "live" data.

(c) The Customer shall only process "live" data using the Development Materials it has not Accepted with DAS's prior written consent.

(d) Within 28 (twenty-eight) days of receipt of a Development Default Notice, DAS shall, at its sole discretion, free of charge replace the Development Materials which is defective or fails to operate provided that the defective Development Materials shall have been returned to DAS. Any replaced Development Materials shall be redelivered to the Customer by DAS free of charge but otherwise in accordance with and subject to these Conditions whereafter Conditions 5.3(a) to 5.3(d) shall again apply.

(e) For the purposes of allowing DAS to perform its obligations under the Agreement the Customer agrees at its own expense to install, operate and keep fully operational the Customer's Items prior and subsequent to the Development Software Delivery Date together with such Third Party Software, computer hardware, peripherals, operating systems and other software as DAS may from time to time reasonably require.

(f) The Customer acknowledges that the Development Software includes encoded parameters designed to help prevent use of the Development Software (including as described in Condition 3.6(c)) otherwise than in accordance with the Agreement.

(g) Time shall not be of the essence in relation to DAS's obligations under this Condition 5.

## 6. Software Maintenance Services

6.1 This Condition 6 applies in relation to a Software Licence Order during the applicable warranty period set out in Condition 11.1(d) and thereafter shall only apply subject to a signed Maintenance Service Order.

6.2 If subsequent to acceptance the Customer shall discover that the Licensed Programs fail to operate and perform in all material respects in accordance with the Specification, then the Customer shall as soon as reasonably practical notify DAS of the defect or error in question by telephone to the DAS support desk, confirming this in writing thereafter.

6.3 DAS shall use its reasonable endeavours to correct any material defect or error in the Licensed Programs during the Maintenance Hours (as set out in the Service Level Agreement) in accordance with the provisions of the Service Level Agreement and the remainder of this Condition 6. Such correction may be by such method as DAS reasonably deems appropriate, and may include a "patch" or workaround. As soon as practicably possible after such correction has been completed, DAS shall by such method as it deems suitable provide to the Customer a corrected version of the Licensed Programs or a Maintenance Update in machine readable form together with any appropriate amendments to the Program Documentation specifying the nature of the correction and providing instructions for the installation by the Customer and proper use of the corrected version of the

Licensed Programs or Maintenance Update. The Customer acknowledges that it shall bear the cost of downloading all corrected versions of the Licensed Programs and any Maintenance Updates issued pursuant to this Condition 6.3.

6.4 Subject to the exceptions in Condition 7.1, DAS shall use its reasonable endeavours to ensure that the Licensed Programs remain interoperable with the Customer's Items and the Third Party Software described in the Specification.

6.5 If the Customer discovers that the Program Documentation does not provide adequate or correct instruction to enable the Customer reasonably to make proper use of any facility or function set out in the Specification, then the Customer shall notify DAS in writing of the fault in question as soon as reasonably practical and in any event within 7 (seven) days after such discovery. DAS shall thereupon promptly correct the fault and provide the Customer with appropriate amendments to the Program Documentation.

## **7. Exceptions**

7.1 Maintenance Services shall not be provided in relation to:-

- (a) defects or errors resulting from any modifications of the Licensed Programs made (other than where acting in accordance with DAS's express instructions) by the Customer or any person other than DAS;
- (b) defects or errors resulting from any changes or manipulation of the Customer's Data made other than through the use of the Licensed Programs, including any changes to data made directly through the host database (such as, for example, M/S SQL Server);
- (c) incorrect or improper use of the Licensed Programs including any use other than in accordance with the Program Documentation;
- (d) any fault or breakdown in the Customer's Data, Customer's Items or in the Third Party Software or any other materials used by the Customer in conjunction with the Licensed Programs;
- (e) any modification of the Licensed Programs, or their merger (whether in whole or in part) with any other software;
- (f) any re-configurations of the Licensed Programs to enable the Customer to use them for new or different business purposes;
- (g) any re-configurations of the Licensed Programs necessitated by or related to any update, upgrade of, or modification to the Customer's Items or the Third Party Software;
- (h) any services which may be requested or advisable and which result from any act or omission of the Customer (including any failure by the Customer to comply with Condition 8) or any failure by the Customer to act in accordance with a reasonable request of DAS;
- (i) the supply of new versions of the Licensed Programs with enhanced functionality or new modules;
- (j) Training and Additional Services, including programming and report creation services;
- (k) the provision of services to the Customer's clients and customers, notwithstanding that the Licensed Programs may include Internet enabled customer facing modules;
- (l) an event of force majeure, pursuant to Condition 15; or
- (m) the Licensed Programs outside the warranty period set out in Condition 11.1(d) where no relevant Agreement in relation to Maintenance Services is in force.

7.2 DAS shall make Additional Charges in accordance with its standard scale of charges from time to time in force and notified to the Customer for any services provided by DAS:-

- (a) at the request of the Customer, but which fall outside the scope of the Maintenance Services;
- (b) at the request of the Customer, but which do not qualify by virtue of any of the exclusions referred to in Condition 7.1 above;
- (c) in relation to calls by the Customer to the DAS helpdesk outside DAS's applicable Maintenance Hours (as defined in the Service Level Agreement). For the avoidance of doubt, DAS shall be under no obligation to respond to such calls, but where it does Additional Charges shall apply;

- (d) in relation to the repair or renewal of Customer's Items including any tapes, disc packs, printing cartridges or other consumable supplies;
- (e) in accordance with Condition 9.2; or
- (f) by way of training not set out in an Agreement for Training, including any remedial training to eliminate what DAS in its reasonable discretion deems to be repetitive information requests and/ or repetitive operational errors on the part of the Customer's employees.

## **8. Customer's Obligations**

During the continuance of the Agreement, the Customer shall at its own expense:-

- 8.1 use only the latest version of the Licensed Programs supplied to the Customer by DAS from time to time;
- 8.2 ensure that the Licensed Programs and the Customer's Items are used in a proper manner by competent trained employees only;
- 8.3 keep and operate the Customer's Items and Third Party Software in a proper and prudent manner in accordance with the manufacturer's operating instructions. For the avoidance of doubt, the Customer shall be solely responsible for the purchasing, configuration, operation, maintenance and support of all such items and software;
- 8.4 keep and operate the Customer's Items and the Licensed Programs in both a secure physical environment and secure digital environment through following best computing practice in relation to the full and proper use of firewalls, virus scanners and other security systems;
- 8.5 use the Program Materials in relation to Customer's Data only and not use the Program Materials for the provision of bureau, out-sourcing or other similar services to third parties;
- 8.6 not (other than to the extent and in the circumstances expressly required to be permitted by law or any other relevant agreement with DAS) alter, adapt or modify the Program Materials or the Customer's Items in any way whatever nor permit the whole or any part of the Licensed Programs to be combined with any other programs to form a combined work. In those circumstances where the Customer has the right in law to decompile the Licensed Programs in order to obtain information necessary to make the Licensed Programs interoperable with other computer programs used by the Customer, the Customer agrees to request in writing (giving full details of its objectives and the other software involved) such information from DAS. In such circumstances DAS shall make such information readily available subject to reasonable conditions.
- 8.7 except where DAS unreasonably fails to provide the Maintenance Services, not request, permit or authorise anyone other than DAS to provide any maintenance services in respect of the Program Materials;
- 8.8 offer reasonable assistance to DAS's personnel or its duly authorised representative in the diagnosis of any error or defect in the Program Materials;
- 8.9 make regular back-up copies of Customer's Data and other records in accordance with best computing practice including the retention of hard copy records;
- 8.10 keep and make available to DAS, free of charge, all information, documentation, data, logs, back-up and security copies, facilities and services reasonably required by DAS to enable DAS or its duly authorised representative to perform the Maintenance Services including computer runs, memory dumps, printouts, data preparation, office accommodation, typing and photocopying;
- 8.11 allow DAS both all such physical and remote access as DAS may reasonably require to perform its obligations under the Agreement;
- 8.12 provide such telecommunication facilities, at the Customer's expense, as are reasonably required by DAS or its duly authorised representative for testing and diagnostic purposes including the reimbursement to DAS of any reasonable costs incurred by DAS by supplying the Maintenance Services remotely; and
- 8.13 in the interests of health and safety, notify DAS of any health and safety hazards which may exist or arise on any premises occupied by the Customer which may affect DAS. DAS shall draw these hazards to the attention of its employees, sub-contractors or any persons engaged by DAS in the performance of the Agreement.

## **9. Site Visits and Training**

9.1 If it is deemed necessary in DAS's reasonable opinion, DAS or its duly authorised representative shall, at the Customer's request, attend the Location(s) in order to diagnose and/or correct any defects or errors in the Licensed Programs. Such visits shall be made during the Maintenance Hours (as defined in the Service Level Agreement) by prior appointment with the Customer.

9.2 Where such site visit is requested or required due to any failure by the Customer to comply with Condition 8, the Customer shall pay to DAS, as Additional Charges, the receipted cost of attendance (as calculated from the site visit rates in the Order) together with any out-of-pocket expenses incurred by DAS or its duly authorised representative in relation to such site visit (in accordance with the rates set out in the Order).

## **10. Intellectual Property**

10.1 The Program Materials and Development Materials are protected by Intellectual Property Rights. Such intellectual property rights shall remain at all times the exclusive property of DAS (or its licensor(s)).

10.2 The Customer shall not, save as expressly provided in the Agreement:-

- (a) subject to Condition 10.3, make copies of the whole or any part of the Program Materials or Development Materials;
- (b) except always and solely for any acts expressly permitted by law, adapt or reverse-compile the whole or any part of the Licensed Programs or the Development Software; or
- (c) remove or alter any copyright or other proprietary notice on any of the Program Materials or the Development Materials.

10.3 The Customer shall be entitled to make one back-up copy of each of the Licensed Programs and the Development Software. Any such copy shall, in all respects, be subject to the Agreement and shall be deemed to form part of the Licensed Programs and the Development Software.

10.4 DAS may use Customer's Data for the sole purpose of performing its obligations under the Agreement. All Intellectual Property Rights in Customer's Data are and shall remain the exclusive property of the Customer.

10.5 The Company shall permit DAS to check the use of the Program Materials and the Development Materials at all reasonable times and for such purposes hereby irrevocably licenses DAS's representatives to enter the Customer's premises on reasonable prior notice.

10.6 All Intellectual Property Rights in any modifications to the Program Materials and Development Materials (including any created as part of the Additional Services) shall vest and remain vested in DAS absolutely and the Customer shall not acquire any proprietary rights therein except to the limited extent that the licence granted under Condition 2.1 and/or Condition 5.2(b) shall apply to them.

10.7 The Customer shall notify DAS forthwith if it believes the Program Materials or the Development Materials infringe the Intellectual Property Rights of any third party or is being infringed by any person.

## **11. Warranties**

11.1 Subject to the exceptions set out in Conditions 11.3 and 11.5 below and the limitations upon its liability in Condition 12 below, DAS warrants and undertakes to the Customer that:-

- (a) its title to and property in the Program Materials are free and unencumbered and that it has the right, power and authority to licence them under the Agreement;
- (b) the media upon which the Licensed Programs are stored will be, for a period of 12 (twelve) months from the Licensed Programs Delivery Date, of satisfactory quality, and free from material defects and reasonably fit for use;
- (c) the Program Documentation shall provide adequate instructions to enable the Customer to make proper use of the Licensed Programs;
- (d) the Licensed Programs will for a period of 6 (six) months from the date of acceptance pursuant to Condition 4.4 operate and perform in all material respects in accordance with the Specification. During this period, Condition 6.2 shall apply where the Licensed Programs do not so operate and perform;

- (e) the Development Services, the Maintenance Services, Training and any Additional Services shall be supplied and rendered with reasonable skill, care and diligence by appropriately experienced, qualified and trained personnel in accordance with good industry practice and its own established internal procedures;
- (f) it will comply with its obligations under applicable data protection laws and regulations applicable to the Agreement from time to time; and
- (g) it will substantially meet any Service Levels.

11.2 The Customer warrants and undertakes to DAS that:-

- (a) it is, and shall remain throughout the duration of the Agreement, free and entitled to enter into the Agreement;
- (b) it will comply with its duties under the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other data protection laws and regulations applicable to the Customer's obligations under the Agreement; and
- (c) it will exercise all reasonable care to ensure that DAS's property is not damaged.

11.3 The Customer acknowledges that it has, prior to the date of the Agreement, had a demonstration of how the Licensed Programs are intended to operate and has a clear understanding of their functionality. The Customer is solely responsible for determining the suitability of the Licensed Programs for its intended use of them. The Customer also acknowledges the need for it to have in place effective back-up, contingency and disaster recover plans.

11.4 Subject to Condition 11.1, the Customer acknowledges and accepts that DAS gives no warranties of any kind in relation to the Program Materials, the Development Materials, the Development Services, Training, Maintenance Services or Additional Services and that any conditions, warranties, terms and undertakings which would otherwise be implied into the Agreement (whether by statute or otherwise) relating to the Program Materials, the Development Materials, the Development Services, Training, Maintenance Services or Additional Services or the provision of any other goods or services by DAS to the Customer under the terms of the Agreement (excluding the conditions set out in section 12 of the Sale of Goods Act 1979) are hereby excluded to the fullest extent permitted by law.

11.5 If DAS supplies any Third Party Software, DAS shall use its reasonable endeavours to transfer to the Customer the benefit of any warranty in respect thereof given to DAS and in any event DAS shall not be responsible for any defect or error in such Third Party Software.

## **12. Liability**

12.1 Nothing in the Agreement shall operate to exclude or limit liability for death or personal injury, fraudulent misrepresentation or any other matter for which liability cannot be excluded or limited under law.

12.2 Subject to Condition 12.1, the respective liability of DAS and the Customer arising out of or in connection with any Agreement in respect of each event or series of connected events shall not exceed in aggregate 110% (one hundred and ten percent) of the total amount paid or payable under the Agreement in the 12 (twelve) months immediately preceding such liability first arising.

12.3 Subject to Condition 12.1 but notwithstanding anything else contained in the Agreement, DAS shall not be liable to the Customer for:-

- (a) any loss of profits or contracts or customers;
- (b) loss of Customer's Data and undertaking data or other restoration;
- (c) loss of bookings or of reputation;
- (d) manager's and consultant's time in undertaking data or other restoration; or
- (e) any other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

12.4 DAS shall not be liable to the Customer for any loss arising out of any failure by the Customer to perform any of its obligations under the Agreement.

12.5 DAS shall not be liable to the Customer for a breach of any of the warranties contained in Condition 11.1(b) to (g):

- (a) unless the Customer gives written notice of the breach to DAS as soon as reasonably practical following the time when the Customer discovers or ought reasonably to have discovered the defect or error causing the breach and DAS is given a reasonable opportunity after receiving the notice of examining the relevant materials to remedy such defect or error; and
- (b) where any relevant defect or error is caused by any of the factors listed in Condition 7.1.

### **13. Confidentiality and Poaching**

13.1 Each party agrees and undertakes that both before and following termination of the Agreement for whatever reason it will keep confidential and will not use for its own purposes, or without the prior written consent of the other party disclose to any third party, any information disclosed to it in connection with the Agreement (whether orally or in writing), and which is expressly stated or marked as being confidential or which ought reasonably to be treated as such, unless such restricted information is public knowledge other than as a result of a breach of this Condition, or has been independently acquired from a third party without restriction on disclosure, or is required to be disclosed by law or any regulatory body or is required to be disclosed for the purposes of litigation by or against either party.

13.2 The Customer shall not without the prior written consent of DAS at any time during the period from the date of the Agreement to the expiry of 6 (six) months after the date of termination of the Agreement employ, attempt to employ, solicit or endeavour to entice away from or discourage from being employed by DAS any person who is, or shall at any time between the date of the Agreement and the date of such termination be, one of DAS's employees engaged in providing the Development Services and/or the Maintenance Services whose rate of gross basic contractual remuneration payable by DAS as at the date of the Agreement (or as at the date of commencement of such person's employment if such employment shall commence after the date of the Agreement) is £20,000 per annum or more.

### **14. Term and Termination**

14.1 Unless terminated earlier pursuant to Condition 14.2:-

- (a) an Agreement in respect of a Software Licence, Maintenance Services and Additional Services shall continue for the Contract Period and shall thereafter continue on the same terms unless and until terminated by either party giving to the other not less than 3 (three) month's written notice (such notice to take effect, at the earliest, at the end of the Contract Period); and
- (b) an Agreement in respect of Development Services shall continue until Acceptance of the Development Materials when the Customer shall then continue to use the Development Materials in accordance with the licence terms referred to in the Development Services Order.

14.2 Without prejudice to any other remedies available, the Agreement may be terminated:-

- (a) by either party with immediate effect if the other commits a material breach of the Agreement which, in the case of a breach capable of remedy, shall not have been remedied within 28 (twenty-eight) days of the receipt by the other of a notice identifying the breach and requiring its remedy. Upon remedy, the party in breach shall provide proof of remedy within this same 28 (twenty eight) days;
- (b) by DAS with immediate effect if any payment due by the other party shall be outstanding for more than 28 (twenty-eight) days;
- (c) by either party with immediate effect if the other party passes a resolution for winding up (other than for the purpose of a solvent amalgamation or reconstruction) or if it shall cease to carry on its business or substantially the whole of his business or becomes or is declared insolvent, bankrupt or convenes a meeting of or proposes to make any arrangement or composition with its creditors or if a liquidator, receiver, administrator or trustee or similar officers is appointed over the assets of it or any analogous step is taken in connection with insolvency or dissolution;
- (d) by DAS with immediate effect within 60 (sixty) days of a Change of Control of the Customer or holding company of the Customer. "Change of Control" shall mean the person or persons having direct or indirect beneficial ownership of more than 50% of the share capital of the Customer or its holding company as at the date of the Agreement ceasing to have such ownership; or
- (e) by DAS with immediate effect if the Customer infringes the Intellectual Property Rights of DAS (or its licensors).

14.3 Conditions 10, 12, 13, 14 and 18 shall survive termination of the Agreement.



14.4 Any termination of the Agreement shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law.

14.5 Within 14 (fourteen) days of the termination of the Agreement (howsoever and by whomsoever occasioned) the Customer shall, unless otherwise directed by DAS delete or destroy all copies of the Program Materials and Development Materials, together with all tangible and intangible property of DAS, in its possession or control and a duly authorised officer of the Customer shall certify in writing to DAS that the Customer has done this. During this 14 (fourteen) day time period the Customer may at its own expense remove all Customer's Data for possible use on another system.

14.6 Upon termination of the Agreement (howsoever occasioned) all Charges payable shall become immediately due.

14.7 It is envisaged that a contract in relation to Maintenance Services may expire or terminate prior to or at the same time as the Customer's licence to Use the Program Materials expiring or terminating, but that it will not expire or terminate subsequent to the licence expiring or terminating.

## **15. Force Majeure**

Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying (including, without limitation, any act of God, fire, flood, strike, lock-out or other form of industrial action or software, hardware, telecoms or other computer failure).

## **16. Notices**

Any notice or other document to be given under the Agreement shall be in writing and delivered or sent by first class post, by e-mail or facsimile transmission (such e-mail or facsimile transmission to be confirmed by recorded delivery letter or receipted courier despatched within 12 (twelve) hours) to the address or e-mail or facsimile number of the other party set out in the Order (or such other address or number as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 (forty-eight) hours after posting or upon the expiration of 12 (twelve) hours after despatch (if sent by e-mail or facsimile transmission).

## **17. Benefit, Assignment And Sub-Contracting**

17.1 The Contracts (Rights of Third Parties) Act 1999 is excluded from applying to the Agreement and, except only in relation to any successors in title and permitted assignees, the Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its terms.

17.2 Except strictly only insofar as the Development Software and Licensed Programs may allow the Customer's customers and clients to access certain modules of the Development Software and Licensed Programs via the Internet, the Customer shall not be entitled to assign, transfer, sell, sub-license, rent, charge or otherwise deal in or encumber, whether in whole or in part, the Program Materials or the Development Materials or its rights to the Development Services, Training, Maintenance Services or Additional Services.

17.3 Subject to DAS continuing to be responsible for such obligations, DAS may sub-contract any of its obligations under the Agreement.

17.4 Subject to the prior written consent of the Customer which shall not be unreasonably withheld or delayed, DAS may transfer and/or assign the Agreement or any of its rights and obligations hereunder to any other party provided that no such consent shall be required upon any assignment by DAS to any "holding company" or "subsidiary" as defined by section 736 of the Companies Act 1985 (as amended).

## **18. General**

18.1 If any provision in the Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that provision or part shall to that extent be deemed not to form part of the Agreement and the enforceability of the remainder of the Agreement shall not be affected.

18.2 DAS and the Customer are each independent contractors with respect to each other and nothing in the Agreement shall create any partnership, joint venture or agency relationship between them.

18.3 Subject to any variation under Condition 18.4, the terms and conditions of the Agreement shall apply as between the parties in respect of the subject matter hereof to the exclusion of all other terms and conditions (including any terms and conditions that the Customer purports to apply).

18.4 The Agreement contains the entire understanding of the parties with respect of the subject matter hereof, supersedes all prior agreements and may not be modified or amended except in writing signed by a duly authorised representative of the parties.

18.5 Subject to Condition 12.1, DAS shall not be liable to the Customer for loss arising from or in connection with any representations (except always those made fraudulently), agreements, statements or undertakings made prior to the date of execution of the Agreement other than those representations, agreements, statements or undertakings confirmed by a duly authorised representative of DAS in writing or expressly incorporated or referred to in the Agreement.

18.6 Failure or delay by DAS in enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the Agreement.

18.7 Each right or remedy of DAS under the Agreement is without prejudice to any other right of remedy of DAS.

18.8 The Agreement shall be governed by English law and shall be subject to the non-exclusive jurisdiction of the English Courts.

# DA SYSTEMS - NX STANDARD TERMS AND CONDITIONS v1b

## DA SYSTEMS LIMITED - NX STANDARD TERMS AND CONDITIONS ("Conditions") Version 1b

These are the Conditions of DA Systems Limited ("DAS") which may be updated from time to time by notification in writing. Where there is any inconsistency between the provisions hereof and an Order (defined below), the provisions of the Order will apply. These Conditions together with the applicable Order will govern continuing business between the Customer and DAS in relation to the subject of that Order. Each Order shall constitute a separate contract.

### 1. Interpretation

1.1 In the Agreement, unless the context otherwise requires, the following expressions have the following meanings:-

"Acceptance" means the date on which the Program Materials are accepted (or deemed to be accepted) by the Customer pursuant to Conditions 4.2 to 4.5 and "Accepted" shall be construed accordingly.

"Additional Charges" means the charges and expenses set out in an Additional Services Order or as otherwise calculated in accordance with the scale of charges of DAS from time to time.

"Additional Services" means any services additional to the Maintenance Services, including any bespoke programming requests or other ad-hoc work or services identified in an Additional Services Order.

"Agreement" means an agreement subject to a signed Order and incorporating these Conditions, whether for a licence of the Licensed Programs, Maintenance Services or Additional Services.

"Charges" means the Licence Fee, Maintenance Fee and Additional Charges.

"Contract Period" means the period of time described in the Order.

"Customer" means that person identified as such in the Order.

"Customer's Data" means the Customer's own data relating to its customers and/or deliveries.

"Customer's Items" means any of the Customer's hardware (including the Customer's Wireless Devices), software (including operating systems), telecommunications (including contracts with the relevant mobile network operator), data transmission lines and peripherals identified in the Order and/or the Specification.

"Delivery Date" means the date set out in the Order that the Licensed Programs are to be delivered by DAS to the Customer at the Location pursuant to Clause 4.

"Licence Fee" means the monthly fee due to DAS pursuant to a Software Licence Order.

"Licensed Programs" means all software programs, in machine-readable object code, supplied by DAS and described as such in a Software Licence Order (including any modified or corrected versions of such programs made available by DAS) with the exception of any Third Party Software.

"Location(s)" means the areas set out in the Order where the gateway application part of the Licensed Programs are being installed by the Customer.

"Maintenance Fee" means the sums payable by the Customer in respect of Maintenance Services as set out in a Maintenance Services Order.

"Maintenance Services" means the maintenance services to be provided by DAS in relation to the Licensed Programs pursuant to a Maintenance Services Order.

"Maintenance Update" means any modified or corrected version of any of the Licensed Programs or Program Documentation from time to time issued by DAS.

"Order" means an order form of DAS to which these Conditions are annexed. An "Order" may be either a Software Licence Order, Maintenance Services Order or an Additional Services Order which shall relate to Use of the Licensed Programs, Maintenance Services and Additional Services respectively.

"Program Documentation" means any user guides and other information made available from time to time during the Agreement by DAS in either printed or electronic form.

“Program Materials” means the Licensed Programs and the Program Documentation.

“Service Levels” means the levels of service specified in the Service Level Agreement attached to a Maintenance Services Order.

“Specification” means the description of the functionality and facilities of the Licensed Programs as described in the “Functionality Document” of DAS as at the date of the Agreement.

“Use” means as defined in Condition 2.1.

“Third Party Software” means the software identified as such in the Order and supplied by third parties.

“Wireless Device” means a GPRS enabled handheld wireless device combining the telecommunications, computing and networking features which can be used by the Customer to relay relevant Customer’s Data using the Licensed Programs.

1.2 The headings in these Conditions are for ease of reference only and shall not affect the construction or interpretation of the Agreement.

1.3 Words denoting the singular meaning include the plural and vice versa unless the context otherwise requires.

1.4 Words of any one gender include the other gender and may be used interchangeably and words denoting natural persons include corporations and firms and all such words are to be construed interchangeably.

1.5 If there shall be any inconsistency between the provisions of the Order and the other provisions of the Agreement then the provisions of the Order shall prevail.

1.6 References to “including” and “include” shall be deemed to mean respectively “including without limitation” and “include without limitation”.

1.7 References in the Agreement to any statute, statutory provision or regulation includes a reference to:-

(a) that statute, statutory provision or regulations as from time to time amended, extended, re-enacted or consolidated whether before or after the date of the Agreement; and

(b) all statutory instruments or orders made pursuant to it.

## **2. Grant of Licence and Provision of Services**

2.1 Subject to the terms of a Software Licence Order, DAS grants to the Customer a non-exclusive licence to Use the Program Materials in the Location(s) and on the number of Wireless Devices specified in the Software Licence Order for the duration of the Agreement. “Use” of the Program Materials means:-

(a) the reading and possession of the Program Documentation;

(b) the possession, loading and subsequent processing and operating of the Licensed Programs on the Customer’s Items as specified in the Software Licence Order for the Customer’s own business purposes; and

(c) the possession, loading and subsequent processing and operating of the Licensed Programs concurrently on the number of Wireless Devices specified in the Software Licence Order.

2.2 Subject to the terms of a Maintenance Services Order and/or Additional Services Order, DAS agrees to provide respectively the Maintenance Services and/or the Additional Services to the Customer for the duration of the Agreement.

2.3 The Customer shall only Use the Licensed Programs in conjunction with Customer Items supported and approved in writing by DAS from time to time including those models of Wireless Device and those mobile network operators supported and approved by DAS.

## **3. Charges**

3.1 The Customer shall pay to DAS the Licence Fee on the payment dates set out in the Order.

3.2 The Customer shall pay to DAS the Maintenance Fee and the Additional Charges on the payment dates set out in the Order.

3.3 Subject to receipt of DAS's invoice, all Charges shall be paid in accordance with the payment terms set out in the Order and without any deduction or withholding by way of set-off or counter-claim. If the Customer wishes to dispute a DAS invoice it must do so within 7 (seven) days of the invoice date. Time for payment shall be of the essence.

3.4 All Charges quoted are exclusive of VAT or other applicable sales tax which shall be paid by the Customer at the appropriate rate.

3.5 Charges shall be reviewed with effect from the beginning of each July after the Delivery Date (the "Review Date"). If, upon any such review, the monthly figure given by the General Index of Retail Prices (formerly titled MM23) as published by National Statistics, or any other table (or index) replacing that table most recently published prior to the Review Date shows an increase in relation to the monthly figure last published prior to the date of the Agreement (or, where the sums payable have been increased pursuant to this Condition, prior to the effective date of the last increase), Charges may be increased in the same proportion with effect from the Review Date.

3.6 If any sum payable under the Agreement is not paid within 28 (twenty-eight) days after its due date (as described in Condition 3.1 or 3.2), then (without prejudice to DAS's other rights and remedies) DAS reserves the right to:-

- (a) suspend the Customer's right to Use the Licensed Programs;
- (b) suspend all or any part of the Maintenance Services and the Additional Services including the supply by DAS from time to time of the Maintenance Updates;
- (c) deactivate the use by the Customer of the Licensed Programs such as to make them inoperable; and
- (d) do any of the things referred to in paragraphs (a) to (c) above in respect of any other agreement between the parties.

3.7 The Customer shall bear all its own costs in connection with its use of the Licensed Programs including its cost of downloading all new versions of the Program Materials and any Maintenance Updates.

#### **4. Delivery, Installation and Acceptance**

4.1 This Condition 4 applies in relation to a Software Licence Order.

4.2 Subject to Condition 4.9, on the Delivery Date, or as soon thereafter as is reasonably practical, DAS shall deliver to the Customer a copy of the Program Materials and the Customer shall accept such delivery by signing and returning the Receipt of Delivery and Acceptance Certificate in the form annexed hereto ("the Certificate") to acknowledge such acceptance. The Customer shall be responsible for installation at its own expense of the Licensed Programs and in doing so it shall follow any reasonable instructions given by DAS.

4.3 The Customer shall not unreasonably delay Acceptance or withhold the Certificate and shall only be entitled to reject the Program Materials if they do not operate in accordance with the Specification. The Customer shall be deemed to have Accepted the Program Materials if:-

- (a) DAS has not received the Certificate within 14 (fourteen) days of the actual delivery date of the Program Materials; or
- (b) DAS has not received within 14 (fourteen) days of the actual delivery date of the Program Materials the Customer's detailed reasons in writing as to why the Program Materials do not operate in accordance with the Specification (a "Default Notice"); or
- (c) the Customer has used the Program Materials to process "live" data.

4.4 The Customer shall only process "live" data using the Program Materials when it has not Accepted the Program Materials with DAS's prior written consent.

4.5 Within 28 (twenty-eight) days of receipt of a Default Notice DAS shall, at its sole discretion, free of charge replace the Licensed Programs which are defective or fail to operate provided that the defective Licensed Programs shall have been returned to DAS. Any replaced Licensed Programs shall be redelivered to the Customer by DAS free of charge to the Location but otherwise in accordance with and subject to these Conditions whereafter Conditions 4.2 to 4.5 shall again apply.

4.6 The remedies contained in this Condition 4 are without prejudice to and in addition to any warranties, indemnities, remedies or other rights provided by law and/or statute and/or under any other provision of the Agreement for the benefit of the Customer.

4.7 For the purposes of allowing DAS to perform its obligations under the Agreement the Customer agrees at its own expense to install, operate and keep fully operational at the Location(s) the Customer's Items prior and subsequent to the Delivery Date together with such Third Party Software, computer hardware, peripherals, operating systems and other software as DAS may from time to time reasonably require.

4.8 The Customer acknowledges that the Licensed Programs include encoded parameters designed to enable DAS to prevent use of the Licensed Programs (including as described in Condition 3.6(c)) otherwise than in accordance with the Agreement.

4.9 Time shall not be of the essence in relation to DAS's obligations under this Condition 4.

4.10 Risk in the media on which the Program Materials are recorded or printed shall pass to the Customer on delivery. If any part of such media shall thereafter be lost, destroyed or damaged, DAS shall at the request of the Customer replace the same promptly (embodying the relevant part of the Licensed Program or Program Documentation) subject to the Customer paying the cost of such replacement.

## **5. Software Maintenance Services**

5.1 This Condition 5 applies in relation to a Software Licence Order during the applicable warranty period set out in Condition 10.1(d) and thereafter shall only apply subject to a signed Maintenance Services Order.

5.2 If subsequent to Acceptance the Customer shall discover that the Licensed Programs are defective or fail to operate and perform in all material respects in accordance with the Specification, then through its nominated IT contact (and not through end-users) the Customer shall as soon as reasonably practical notify DAS of the defect or error in question by telephone to the DAS support desk when a unique customer log number shall be issued by DAS to the Customer. The Customer shall then confirm this in writing to DAS quoting its unique customer log number.

5.3 DAS shall use its reasonable endeavours to correct any material defect or error in the Licensed Programs during the Maintenance Hours (as set out in the Service Level Agreement) in accordance with the provisions of the Service Level Agreement and the remainder of this Condition 5. Such correction may be by such method as DAS reasonably deems appropriate, and may include a "patch" or workaround. As soon as practicably possible after such correction has been completed, DAS shall by such method as it deems suitable provide to the Customer a corrected version of the Licensed Programs or a Maintenance Update in machine readable form together with any appropriate amendments to the Program Documentation specifying the nature of the correction and providing instructions for the installation by the Customer and proper use of the corrected version of the Licensed Programs or Maintenance Update. The Customer acknowledges that it shall bear the cost of downloading all corrected versions of the Licensed Programs and any Maintenance Updates issued pursuant to this Condition 5.3.

5.4 Subject to the exceptions in Condition 6.1, DAS shall use its reasonable endeavours to ensure that the Licensed Programs remain interoperable with the Customer's Items and any Third Party Software described in the Specification.

5.5 If the Customer discovers that the Program Documentation does not provide adequate or correct instruction to enable the Customer reasonably to make proper use of any facility or function set out in the Specification, then the Customer shall notify DAS in writing of the fault in question as soon as reasonably practical and in any event within 7 (seven) days after such discovery. DAS shall thereupon promptly correct the fault and provide the Customer with appropriate amendments to the Program Documentation.

## **6. Exceptions**

6.1 Maintenance Services shall not be provided in relation to:-

- (a) defects or errors resulting from any modifications of the Licensed Programs made (other than where acting in accordance with DAS's express instructions) by the Customer or any person other than DAS;
- (b) defects or errors resulting from any changes or manipulation of the Customer's Data made otherwise than in accordance with the Program Documentation, including any changes to data made directly through a host database (such as, for example, M/S SQL Server);
- (c) incorrect or improper use of the Licensed Programs including any use other than in accordance with the Program Documentation;

- (d) any fault or breakdown in the Customer's Data, Customer's Items or in the Third Party Software or any other materials used by the Customer in conjunction with the Licensed Programs;
- (e) any modification of the Licensed Programs, or their merger (whether in whole or in part) with any other software;
- (f) any re-configurations of the Licensed Programs to enable the Customer to use them for new or different business purposes;
- (g) any re-configurations of the Licensed Programs necessitated by or related to any update, upgrade of, or modification to the Customer's Items or the Third Party Software;
- (h) any services which may be requested or advisable and which result from any act or omission of the Customer (including any failure by the Customer to comply with Condition 7) or any failure by the Customer to act in accordance with a reasonable request of DAS;
- (i) the supply of new versions of the Licensed Programs with enhanced functionality or new modules or compatibility to Wireless Devices and mobile networks other than those supported and approved by DAS;
- (j) Additional Services, including programming and report creation services;
- (k) the provision of services to the Customer's clients and customers, notwithstanding that the Licensed Programs may include Internet enabled customer facing modules;
- (l) an event of force majeure, pursuant to Condition 14; or
- (m) the Licensed Programs outside the warranty period set out in Condition 10.1(d) where no relevant Agreement in relation to Maintenance Services is in force.

6.2 DAS shall make Additional Charges in accordance with its standard scale of charges from time to time in force and notified to the Customer for any services provided by DAS:-

- (a) at the request of the Customer, but which fall outside the scope of the Maintenance Services;
- (b) at the request of the Customer, but which do not qualify by virtue of any of the exclusions referred to in Condition 6.1 above;
- (c) in relation to calls by the Customer to the DAS helpdesk outside DAS's applicable Maintenance Hours (as defined in the Service Level Agreement). For the avoidance of doubt, DAS shall be under no obligation to respond to such calls, but where it does Additional Charges shall apply;
- (d) in relation to the repair or renewal of Customer's Items including any tapes, disc packs, printing cartridges or other consumable supplies;
- (e) in accordance with Condition 8.2; or
- (f) by way of training, including any remedial training to eliminate what DAS in its reasonable discretion deems to be repetitive information requests and/ or repetitive operational errors on the part of the Customer's employees and contractors.

## **7. Customer's Obligations**

During the continuance of the Agreement, the Customer shall at its own expense:-

- 7.1 use only the latest version of the Licensed Programs supplied to the Customer by DAS from time to time;
- 7.2 ensure that the Licensed Programs and the Customer's Items are used in a proper manner by competent trained employees and contractors only;
- 7.3 keep and operate the Customer's Items and Third Party Software in a proper and prudent manner in accordance with the manufacturer's/supplier's operating instructions. For the avoidance of doubt, the Customer shall be solely responsible for the purchasing, configuration, operation, maintenance and support of all such items and software;
- 7.4 keep and operate the Customer's Items and the Licensed Programs in both a secure physical environment and secure digital environment including through following best practice in relation to the full and proper use of firewalls, virus scanners and other security systems;

7.5 use the Program Materials in relation to Customer's Data only and not use the Program Materials for the provision of bureau, out-sourcing or other similar services to third parties;

7.6 not (other than to the extent and in the circumstances expressly required to be permitted by law or any other relevant agreement with DAS) alter, adapt or modify the Program Materials or the Customer's Items in any way whatsoever nor permit the whole or any part of the Licensed Programs to be combined with any other programs to form a combined work. In those circumstances where the Customer has the right in law to decompile the Licensed Programs in order to obtain information necessary to make the Licensed Programs interoperable with other computer programs used by the Customer, the Customer agrees to request in writing (giving full details of its objectives and the other software involved) such information from DAS. In such circumstances DAS shall make such information readily available subject to reasonable conditions;

7.7 except where DAS unreasonably fails to provide the Maintenance Services, not request, permit or authorise anyone other than DAS to provide any maintenance services in respect of the Program Materials;

7.8 offer reasonable assistance to DAS's personnel or its duly authorised representative in the diagnosis of any error or defect in the Program Materials;

7.9 make regular back-up copies of Customer's Data and other records in accordance with best computing practice including the retention of hard copy records;

7.10 keep and make available to DAS, free of charge, all information, documentation, data, logs, back-up and security copies, facilities and services reasonably required by DAS to enable DAS or its duly authorised representative to perform the Maintenance Services including computer runs, memory dumps, printouts, data preparation, office accommodation, typing and photocopying;

7.11 allow DAS both all such physical and remote access as DAS may reasonably require to perform its obligations under the Agreement;

7.12 provide such telecommunication facilities, at the Customer's expense, as are reasonably required by DAS or its duly authorised representative for testing and diagnostic purposes including the reimbursement to DAS of any reasonable costs incurred by DAS by supplying the Maintenance Services remotely;

7.13 in the interests of health and safety, notify DAS of any health and safety hazards which may exist or arise on any premises occupied by the Customer which may affect DAS. DAS shall draw these hazards to the attention of its employees, sub-contractors or any persons engaged by DAS in the performance of the Agreement; and

7.14 notify DAS immediately if it becomes aware of any unauthorised use of the whole or any part of the Program Materials by any person.

## **8. Site Visits and Training**

8.1 If it is deemed necessary in DAS's reasonable opinion, DAS or its duly authorised representative shall, at the Customer's request, attend the Location(s) in order to diagnose and/or correct any defects or errors in the Licensed Programs. Such visits shall be made during the Maintenance Hours (as defined in the Service Level Agreement) by prior appointment with the Customer.

8.2 Where such site visit is requested or required due to any failure by the Customer to comply with Condition 7, the Customer shall pay to DAS, as Additional Charges, the receipted cost of attendance (as calculated from the site visit rates in the Order) together with any out-of-pocket expenses incurred by DAS or its duly authorised representative in relation to such site visit (in accordance with the rates set out in the Order).

## **9. Intellectual Property**

9.1 The Program Materials contain certain confidential information of DAS and all database rights, copyright and other intellectual property rights in the Program Materials are and shall remain the exclusive property of DAS.

9.2 The Customer shall not, save as expressly provided in the Agreement:-

(a) subject to Condition 9.3, make copies of the whole or any part of the Program Materials;

(b) except always and solely for any acts expressly permitted by law, adapt or reverse-engineer or decompile the whole or any part of the Licensed Programs; or



(c) remove or alter any copyright or other proprietary notice on any of the Program Materials.

9.3 The Customer shall be entitled to make one back-up copy of each of the Licensed Programs. Any such copy shall, in all respects, be subject to the Agreement and shall be deemed to form part of the Licensed Programs.

9.4 DAS may use Customer's Data for the sole purpose of performing its obligations under the Agreement. All database rights, copyright and other intellectual property rights in Customer's Data are and shall remain the exclusive property of the Customer.

9.5 The Company shall permit DAS to check the use of the Program Materials at all reasonable times and for such purposes hereby irrevocably licenses DAS's representatives to enter the Customer's premises on reasonable prior notice.

9.6 All database rights, copyright and other intellectual property rights in any modifications to the Program Materials (including any created as part of the Additional Services) shall vest and remain vested in DAS absolutely and the Customer shall not acquire any proprietary rights therein except to the limited extent that the licence granted under Condition 2.1 shall apply to them.

9.7 The Customer shall notify DAS forthwith if it believes the Program Materials infringe the database rights or intellectual property rights of any third party or is being infringed by any person.

## **10. Warranties**

10.1 Subject to the exceptions set out in Conditions 10.3 and 10.5 below and the limitations upon its liability in Condition 11 below, DAS warrants and undertakes to the Customer that:-

- (a) its title to and property in the Program Materials are free and unencumbered and that it has the right, power and authority to license them under the Agreement;
- (b) the media upon which the Licensed Programs are stored will be, for a period of 12 (twelve) months from the Delivery Date, of satisfactory quality, and free from material defects and reasonably fit for use;
- (c) the Program Documentation shall provide adequate instructions to enable the Customer to make proper use of the Licensed Programs;
- (d) the Licensed Programs will for a period of 6 (six) months from the date of Acceptance operate and perform in all material respects in accordance with the Specification. During this period, Condition 5.2 shall apply where the Licensed Programs do not so operate and perform;
- (e) the Maintenance Services, Additional Services and any other services shall be supplied and rendered with reasonable skill, care and diligence by appropriately experienced, qualified and trained personnel in accordance with good industry practice and DAS's own established internal procedures;
- (f) it will comply with its obligations under applicable data protection laws and regulations applicable to the Agreement from time to time; and
- (g) it will substantially meet any Service Levels.

10.2 The Customer warrants and undertakes to DAS that:-

- (a) it is, and shall remain throughout the duration of the Agreement, free and entitled to enter into the Agreement;
- (b) it will comply with its duties under the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and other applicable data protection laws and regulations applicable to its obligations under the Agreement;
- (c) it will exercise all reasonable care to ensure that DAS's property is not damaged; and
- (d) it will procure that its employees and contractors' and representatives use of the Wireless Devices will at all times be in accordance with all current laws, regulations and other ordinances relating to road traffic laws and the relevant manufacturer guidelines.

10.3 The Customer acknowledges that it has, prior to the date of the Agreement, had a demonstration of how the Licensed Programs are intended to operate and has a clear understanding of their functionality. The Customer is solely responsible for

determining the suitability of the Licensed Programs for its intended use of them. The Customer also acknowledges the need for it to have in place effective back-up, contingency and disaster recover plans.

10.4 Subject to Condition 10.1, the Customer acknowledges and accepts that DAS gives no warranties of any kind in relation to the Program Materials, Maintenance Services or Additional Services and that any conditions, warranties, terms and undertakings which would otherwise be implied into the Agreement (whether by statute or otherwise) relating to the Program Materials, Maintenance Services or Additional Services or the provision of any other goods or services by DAS to the Customer under the terms of the Agreement (excluding the conditions set out in section 12 of the Sale of Goods Act 1979) are hereby excluded to the fullest extent permitted by law.

10.5 If DAS supplies any Third Party Software, DAS shall use its reasonable endeavours to transfer to the Customer the benefit of any warranty in respect thereof given to DAS and in any event DAS shall not be responsible for any defect or error in such Third Party Software.

## **11. Liability**

11.1 Nothing in the Agreement shall operate to exclude or limit liability for death or personal injury, fraudulent misrepresentation or any other matter for which liability cannot be excluded or limited under law.

11.2 Subject to Condition 11.1, the respective liability of DAS and the Customer arising out of or in connection with any Agreement in respect of each event or series of connected events shall not exceed in aggregate 110% (one hundred and ten percent) of the total amount paid or payable under the Agreement in the 12 (twelve) months immediately preceding such liability first arising.

11.3 Subject to Condition 11.1 but notwithstanding anything else contained in the Agreement, DAS shall not be liable to the Customer for:-

- (a) any loss of profits or contracts or customers;
- (b) loss of Customer's Data and undertaking data or other restoration;
- (c) loss of bookings or of reputation;
- (d) manager's and consultant's time in undertaking data or other restoration;
- (e) any other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

11.4 DAS shall not be liable to the Customer for any loss arising out of any failure by the Customer to perform any of its obligations under the Agreement.

11.5 DAS shall not be liable to the Customer for a breach of any of the warranties contained in Condition 10.1(b) to (g):

- (a) unless the Customer gives written notice of the breach to DAS as soon as reasonably practical following the time when the Customer discovers or ought reasonably to have discovered the defect or error causing the breach and DAS is given a reasonable opportunity after receiving the notice of examining the relevant materials to remedy such defect or error; and
- (b) where any relevant defect or error is caused by any of the factors listed in Condition 6.1.

## **12. Confidentiality and Poaching**

12.1 Each party agrees and undertakes that both before and following termination of the Agreement for whatever reason it will keep confidential and will not use for its own purposes, or without the prior written consent of the other party disclose to any third party, any information disclosed to it in connection with the Agreement (whether orally or in writing), and which is expressly stated or marked as being confidential or which ought reasonably to be treated as such, unless such restricted information is public knowledge other than as a result of a breach of this Condition, or has been independently acquired from a third party without restriction on disclosure, or is required to be disclosed by law or any regulatory body or is required to be disclosed for the purposes of litigation by or against either party.

12.2 The Customer shall not without the prior written consent of DAS at any time during the period from the date of the Agreement to the expiry of 6 (six) months after the date of termination of the Agreement employ, attempt to employ, solicit or endeavour to entice away from or discourage from being employed by DAS any person who is, or shall at any time between the date of the Agreement and the date of such termination be, one of DAS's employees engaged in providing the Maintenance

Services whose rate of gross basic contractual remuneration payable by DAS as at the date of the Agreement (or as at the date of commencement of such person's employment if such employment shall commence after the date of the Agreement) is £20,000 per annum or more.

### **13. Term and Termination**

13.1 Unless terminated earlier pursuant to Condition 13.2, the Agreement shall commence on Acceptance and shall continue in force for the Contract Period and shall thereafter continue on the same terms unless and until terminated by either party giving to the other not less than 3 (three) month's written notice (such notice to take effect, at the earliest, at the end of the Contract Period).

13.2 Without prejudice to any other remedies available, the Agreement may be terminated:-

(a) by either party with immediate effect if the other commits a material breach of the Agreement which, in the case of a breach capable of remedy, shall not have been remedied within 28 (twenty-eight) days of the receipt by the other of a notice identifying the breach and requiring its remedy. Upon remedy, the party in breach shall provide proof of remedy within this same 28 (twenty eight) days;

(b) by DAS with immediate effect if any payment due by the Customer shall be outstanding for more than 28 (twenty-eight) days;

(c) by either party with immediate effect if the other party passes a resolution for winding up (other than for the purpose of a solvent amalgamation or reconstruction) or if it shall cease to carry on its business or substantially the whole of his business or becomes or is declared insolvent, bankrupt or convenes a meeting of or proposes to make any arrangement or composition with its creditors or if a liquidator, receiver, administrator or trustee or similar officers is appointed over the assets of it or any analogous step is taken in connection with insolvency or dissolution;

(d) by DAS with immediate effect within 60 (sixty) days of a Change of Control of the Customer or holding company of the Customer. "Change of Control" shall mean the person or persons having direct or indirect beneficial ownership of more than 50% of the share capital of the Customer or its holding company as at the date of the Agreement ceasing to have such ownership;

(e) by DAS with immediate effect if the Customer infringes the intellectual property rights of DAS.

13.3 Conditions 2.2, 9, 10, 11, 12, 15 and 16 shall survive termination of the Agreement.

13.4 Any termination of the Agreement shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

13.5 Within 14 (fourteen) days of the termination of the Agreement (howsoever and by whomsoever occasioned) the Customer shall, unless otherwise directed by DAS delete or destroy all copies of the Program Materials, together with all tangible and intangible property of DAS, in its possession or control and a duly authorised officer of the Customer shall certify in writing to DAS that the Customer has done this. During this 14 (fourteen) day time period the Customer may at its own expense remove all Customer's Data for possible use on another system.

13.6 Upon termination of the Agreement (howsoever occasioned) all Charges payable shall become immediately due.

13.7 It is envisaged that a contract in relation to Maintenance Services may expire or terminate prior to or at the same time as the Customer's licence to use the Program Materials expiring or terminating, but that it will not expire or terminate subsequent to the licence expiring or terminating.

### **14. Force Majeure**

14.1 Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying (including, without limitation, any act of God, fire, flood, strike, lock-out or other form of industrial action or software, hardware, telecoms or other computer failure).

### **15. Notices**

15.1 Any notice or other document to be given under the Agreement shall be in writing and delivered or sent by first class post, by e-mail or facsimile transmission (such e-mail or facsimile transmission to be confirmed by recorded delivery letter or receipted courier despatched within 12 (twelve) hours) to the address or e-mail or facsimile number of the other party set out in the Order (or such other address or number as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 (forty-eight) hours after posting or upon the expiration of 12 (twelve) hours after despatch (if sent by e-mail or facsimile transmission).

#### **16. Benefit, Assignment And Sub-Contracting**

16.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Agreement and, except only in relation to any successors in title and permitted assignees, the Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its terms.

16.2 Except strictly only insofar as the Licensed Programs may be used by contractors working for it, the Customer shall not be entitled to assign, transfer, sell, sub-license, rent, charge or otherwise deal in or encumber, whether in whole or in part, the Program Materials or its rights to the Maintenance Services or Additional Services.

16.3 Subject to DAS continuing to be responsible for such obligations, DAS may sub-contract any of its obligations under the Agreement. DAS may transfer its obligations hereunder to any other party subject to the Customer's prior consent (such consent not to be unreasonably withheld).

#### **17. General**

17.1 If any provision in the Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that provision or part shall to that extent be deemed not to form part of the Agreement and the enforceability of the remainder of the Agreement shall not be affected.

17.2 DAS and the Customer are each independent contractors with respect to each other and nothing in the Agreement shall create any partnership, joint venture or agency relationship between them.

17.3 Subject to any variation under Condition 17.4, the terms and conditions of the Agreement shall apply as between the parties in respect of the subject matter hereof (being DAS's 'NX' product) to the exclusion of all other terms and conditions (including any terms and conditions that the Customer purports to apply).

17.4 The Agreement contains the entire understanding of the parties with respect of the subject matter hereof, supersedes all prior agreements and may not be modified or amended except in writing signed by a duly authorised representative of the parties.

17.5 Subject to Condition 11.1, DAS shall not be liable to the Customer for loss arising from or in connection with any representations (except always those made fraudulently), agreements, statements or undertakings made prior to the date of execution of the Agreement other than those representations, agreements, statements or undertakings confirmed by a duly authorised representative of DAS in writing or expressly incorporated or referred to in the Agreement.

17.6 Failure or delay by DAS in enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the Agreement.

17.7 Each right or remedy of DAS under the Agreement is without prejudice to any other right of remedy of DAS.

17.8 The Agreement shall be governed by English law and shall be subject to the non-exclusive jurisdiction of the English Courts.