

## QUICKLINK TERMS AND CONDITIONS

### PARTIES:

- (1) "Quicklink" Quicklink Video Distribution Services Limited (CRN 04775920) whose registered office is Bay Studios, Fabian Way, Skewen, Swansea, SA1 8QB, UK
- (2) "the Customer"

### RECITALS

- (a) Quicklink agrees to provide the products and services, and the Customer agrees to pay the fees and amounts, and each party undertakes the mutual obligations, described in the relevant sections of this agreement and indicated below. Each such section (together with the relevant definitions and general conditions) shall be treated as a separate agreement and shall be incorporated herein
- (b) Indicate here which section(s) is/are likely to apply:

(i)	Hardware Sale	[As per quotation]
(ii)	Hardware Maintenance	[As per quotation]
(iii)	Software	[As per quotation]
(iv)	Software Support	[As per quotation]
(v)	Proposal Number	[As per quotation]

**Warning**

**Please read the next clause carefully it will affect your legal rights**

- (c) A binding contract will be formed with the Customer on the terms of this agreement when its authorised representative communicates its acceptance of the Proposal by email and the Customer has paid the deposit in cleared funds

NOW IT IS AGREED as follows:

**1 Definitions and interpretation**

1.1 Unless the context otherwise requires the following expressions shall have the meanings attributed to them below. Other less frequently used expressions are defined in the body of the agreement.

“Agreements”	means the agreements or any one of them constituted by the relevant sections hereof and incorporates the Proposal
“Application”	means a discrete part of the Quicklink Software
“Event of Default”	as defined in Clause 37.1
“Event of Force Majeure”	as defined in Clause 39
“Event of Insolvency”	as defined in Clause 37.2
“Go Live Day”	means the day upon which Quicklink certifies the Customer may start to use the Software
“Hardware”	means the computer equipment and other deliverables identified in the Proposal
“Commissioning Date”	as defined in Clause 14.2
“Open Source Software”	means Software which may of itself be Third Party or Shrink-Wrapped Software which is supplied by Quicklink and for which no charge is made by Quicklink other than for the media upon which it is supplied and for the cost of delivery thereof and for which Quicklink claims no copyright, offers no warranty and offers only limited support
“Proposal”	means the numbered proposal from Quicklink to the Customer, a copy of which is annexed hereto, and referred to on page 1
“Quicklink Software”	means the Software owned and licensed by Quicklink
“Shrink Wrapped Software”	means Third Party Software which is supplied by Quicklink as a reseller but which is licensed by a third party direct to the Customer; including Shrink Wrapped Software, or Open Source Software which Quicklink procures for or supplies to the Customer
“Site”	means that part of the Customer’s premises and/or the lap top computer of the Customer’s operative in the field where the Hardware and the Software is to be installed and operated
“Software”	means the computer programs identified by type in the Proposal

"Sold Software"	means Quicklink Software, and Third Party software that has a price attached to it in the Proposal
"Third Party Software"	means Software for which Quicklink has purchased or will for the purposes of this contract purchase licences for resale to the Customer; including Shrink Wrapped Software, or Open Source Software which Quicklink procures for or supplies to the Customer
"User"	means (1) of Quicklink Software any device that has the ability or permission to access Quicklink Software itself or causes a device to access Quicklink Software and (2) of Third Party Software as in accordance with the licensing terms of that Third Party

1.2 The headings in this agreement are for convenience only and do not affect its interpretation

1.3 In this agreement, the words 'include', 'includes', 'including' and 'such as' are to be constructed as if they were immediately followed by the words 'without limitation'

1.4 In this agreement, unless the context clearly indicates another intention:

- 1.4.1 reference to one gender includes all other genders,
- 1.4.2 reference to the singular includes the plural and vice versa,
- 1.4.3 reference to a clause, schedule or party is a reference to a clause or a schedule or party to this agreement,
- 1.4.4 obligations undertaken by more than a single person or company are joint and several obligations,
- 1.4.5 reference to a statutory provision is a reference to that provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision,
- 1.4.6 reference to a document is a reference to that document as from time to time supplemented or varied,
- 1.4.7 reference to writing includes fax, email and similar means of communication,
- 1.4.8 a number of days shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a day that is not a normal working day in England and the Territory in which case the last day shall be the next succeeding day that is a normal working day in both England and the Territory, and
- 1.4.9 any reference to a person includes natural persons and partnerships, firms and other such incorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted

## HARDWARE SALE SECTION

### **2 Definitions relevant to this Section**

“Hardware Price” means that price set out in the Proposal

### **3 Sale**

Quicklink will sell and the Customer will purchase the Hardware for the Hardware Price. The Hardware Price shall be paid as follows:-

- 3.1 as to 100% of the VAT inclusive total as deposit on the acceptance of the Proposal
- 3.2 as to the balance (if any) an invoice will be sent following delivery of the Hardware to the Customer Site and payment is due within 30 days of delivery of the invoice. Delivery charges are in respect of the cost of delivery of Hardware to the Site. They do not include the cost of any building electrical or other special works necessary to enable Hardware to be used at the Site

### **4 Title to and Risk in the Hardware**

- 4.1 title to the Hardware shall not pass to the Customer until Quicklink has received payment for the Hardware in full
- 4.2 until then the Customer shall not sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the Hardware and the Customer shall hold the Hardware for Quicklink in fiduciary capacity as bailee for Quicklink
- 4.3 if the Customer is or becomes subject to an Event of Insolvency, or for any reason the Hardware sale section of the Agreements is terminated, Quicklink may (and the Customer grants Quicklink licence immediately to) enter the Site repossess and resell those items of Hardware for which Quicklink has not received payment without prejudice to any other legal remedies Quicklink may have
- 4.4 if in breach of Clause 4.2 the Customer sells (or in any way disposes of) any of the Hardware then any proceeds of sale or disposal and all rights deriving here from shall be held (if proceeds of sale in a separate account) by the Customer as trustee for Quicklink and the Customer shall supply Quicklink with details of the account
- 4.5 risk in the Hardware shall pass to the Customer on actual delivery to the Site
- 4.6 with effect from the actual delivery date the Customer shall insure the Hardware for its full replacement value with a reputable insurer against all risks for which a prudent businessman would insure
- 4.7 any date or time period for delivery of Hardware or provision of the service specified in any contract or otherwise quoted or agreed to by Quicklink will be estimated by Quicklink as accurately as possible but is not guaranteed and in the event of any failure to meet such date Quicklink’s sole obligation shall be to deliver the Hardware or provide such service within a reasonable period thereafter
- 4.8 the Customer shall indemnify Quicklink against any damage to or loss of any Hardware from the time of delivery of such Hardware or any part thereof to until the receipt by Quicklink of the price of such Hardware
- 4.9 the Customer shall be liable for any costs associated with rendering the Hardware to such state necessary to have granted the Commissioning certificate referred to in Clause [14] where such costs are caused by reasons as described in clause [22.1].

## SOFTWARE LICENCE SECTION

### 5. Definitions relevant to this Section

- 'Licence Fee' means the program licence fee(s) for the Sold Software set out in the Proposal;
- 'Documentation' means any instruction manuals and user guides supplied with the Software.

### 6. Non Exclusive Licence

Quicklink grants the Customer a non-exclusive licence:

- 6.1 to use the Software at the Site provided that the number of users does not exceed the number of user licences stated in the Proposal together with any additional licences sold subsequently.
- 6.2 to make as many back-up copies of the Software and photocopies of the documentation as are reasonably necessary to operate the Software, all such copies being subject to this licence and deemed part of the Software;
- 6.3 to use the Documentation in conjunction with the Software.

### 7. Licence Fee

The Customer shall pay Quicklink the Licence Fee (which shall include the cost of delivery of the Sold Software and the Documentation to the Site) and the media delivery costs of any Open Source Software as follows:

- 7.1 as to 100% of the VAT inclusive total as a deposit on the acceptance of the Proposal
- 7.2 as to the balance (if any) for Third Party Software an invoice will be sent following the delivery of the software to the Customer Site and payment is due within 30 days of delivery of the invoice;
- 7.3 as to the balance for Quicklink Software (if any) an invoice will be sent following the delivery of the software to the Customer Site and payment is due within 30 of delivery of the invoice.

### 8. Confidentiality in the Software and the Documentation

- 8.1 The Software and the Documentation are of a proprietary nature and contain confidential information belonging to Quicklink and/or its licensors. All proprietary rights including without limitation copyright and trademark rights arising out of the use of the Software and the Documentation are reserved to Quicklink and its licensors.
- 8.2 The Customer will not except as permitted by the licence of any Open Source Software;
- (a) except as provided in Clause 6.2, copy any part of the Software or the Documentation;
  - (b) modify any part of the Software or merge or combine it with any other computer program;
  - (c) sell or in any way dispose of all or part of the Software or the documentation or grant any rights over any part of the Software or the Documentation to any third party;

- (d) decompile any part of the Software from low level language into a higher level language, for so long as Software Support is being provided by Quicklink and if it is not, only to the extent permitted by copyright law;
  - (e) make verbal or media adaptations or translations of any part of the Documentation; or
  - (f) use any part of the Software in a computer network, timesharing, cable media system or multiple user arrangement with users who are not licensed by Quicklink.
- 8.3 The Customer will:
- (a) keep the Software and the Documentation confidential and limit access to its employees agents and sub-contractors who have a need to know the relevant information or are lawfully engaged in the use of the Software; and
  - (b) take all other reasonable steps as are necessary to protect the confidentiality information and proprietary rights of Quicklink and/or its licensors in the Software and Documentation
- 8.4 The Customer shall inform all relevant employees agents and subcontractors that the Software and the documentation is confidential and proprietary and shall take all steps as are necessary to ensure compliance by them with this Clause 8

## **9. Risk and Term**

- 9.1 Risk in the Software and the Documentation will pass to the Customer on the actual date of delivery to the Site.
- 9.2 This licence shall commence on the Commissioning Date of the Software and continue in force for 1 year thereafter unless terminated earlier in accordance with Clause 37 or suspended in accordance with clause 38.

## **10. Hardware already owned by the Customer**

In the event that Quicklink is to install software that is to be run on existing hardware of the Customer, Quicklink can accept no responsibility for the ability of that hardware to successfully run its Software, or the speed of operation. Neither the undertaking of a survey by one of Quicklink's employees nor the sale of additional hardware to be fitted to existing hardware shall be taken as any form of representation as to the ability of Quicklink (or other) Software to operate upon such hardware.

## **11. Virus protection firewall and other security software**

Although Quicklink may supply and install at the Customer's request such Software it does not warrant in any way as to the efficiency of such Software, nor shall it be responsible for, and Software support does not extend to, the cost of recovering or re-installing Software or data lost or damaged by the failure of such Software or the failure of the Customer to operate properly such Software.

## **12. Consequences of Termination or Suspension**

- 12.1 Subject to Clause 12.2 within 7 days after expiry of this licence or its termination (by whatever means) the Customer shall destroy all copies of the Software and the Documentation in its possession and shall procure that a duly authorised officer of the Customer will certify the same to Quicklink.

- 12.2 The Customer shall be entitled free of charge for 3 years after the date of termination of this licence to keep one copy of the Software and the Documentation in a fireproof area for archival purposes. If the Customer uses any of the Software other than for archival purposes it shall automatically become liable to pay Quicklink immediately its then current charge for the use of the Software or any equivalent software then licensed.
- 12.3 In the event of suspension of the licence by virtue of clause 38 the Customer will not be able or entitled to utilise Quicklink Software for any purpose whatsoever.

**GENERAL CONDITIONS APPLYING TO  
HARDWARE SALE AND SOFTWARE LICENCE**

**13. Access to the Site**

The Customer shall allow (if required) Quicklink its employees agents and sub-contractors reasonable access to the Customer's Site to allow Quicklink to perform its contractual obligations.

**14. Overall Commissioning**

- 14.1 Quicklink will commission the server Software and/or the server Hardware
- 14.2 Quicklink will inform the Customer when installation and commissioning of the Hardware and Software is completed and shall give the Customer an opportunity to verify the same. The Customer shall accept (and in default shall be deemed to accept) the server Hardware and the server Software on the date or dates ('the Commissioning Date') when Quicklink certified to the Customer that the server Hardware and the server Software has been commissioned.
- 14.3 Where different parts of the server Hardware and/or the server Software are to be commissioned on different dates then the Commissioning Dates shall be such several dates and any payment for the balances due on Commissioning of each part shall be construed accordingly.

**15. Hardware Sale and Software Licence warranty, indemnity and limitations**

- 15.1 Quicklink will indemnify the Customer against liability for death or personal injury and subject to the limit in Clause 15.5 direct damage to property to the extent caused by the negligent acts or omissions of Quicklink.
- 15.2 The only warranties supplied by Quicklink in respect of Hardware or Third Party Software shall be those offered by the manufacturer of such Hardware or Software. No warranties whatever are supplied in respect of Open Source Software.
- 15.3 In respect of Quicklink Software Quicklink's sole warranty is that such software will perform in accordance with the specifications from time to time published by Quicklink current at the date of the execution of the contract.
- 15.4 Quicklink warranties under clause 15.2 and 15.3 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law except as to title to the Hardware and Software. The Agreements are not agreements for sale by sample even if the Customer has been lent any equipment or computer programs for evaluation.

- 15.5 Save for claims for death or personal injury Quicklink's maximum liability to the Customer shall be limited to the total amount of payments listed in the Proposal.
- 15.6 The Customer shall indemnify Quicklink in respect of:-
- 15.6.1 Direct physical damage to any Hardware equipment for so long as it remains the property of Quicklink and damage to any other Quicklink property on the Customer's premises arising other than directly attributable to negligence by Quicklink or its servants or agents. The Customer's liability for such directly physical damage is limited to £500,000 in respect of any one event or series of related events or to the invoiced value of any Hardware damaged, whichever is the lesser.
- 15.6.2 Direct physical injury to, or death of, any of Quicklink's servants or agents resulting from the negligence of the Customer or its agents or servants. Such liability shall be unlimited in amount.
- 15.7 In no event shall Quicklink or their authorised agents be liable in any circumstances for any loss of profits or contracts or for any indirect or consequential loss or damage suffered by the Customer howsoever arising.

## **16. Delivery Dates**

- 16.1 Quicklink will use its reasonable endeavours to meet any estimated delivery installation and commissioning dates but time shall not be of the essence in relation to such dates. The Customer will accept delivery on the actual delivery date, paying Quicklink's storage charges if it refuses delivery without lawful justification.
- 16.2 Quicklink reserves the right to make improvements, substitutions and modifications in the specification of any item or items of Hardware or Software, provided that such improvements, substitutions or modifications will not materially adversely affect the performance of such Hardware and Software.

## **17. Leasing/Financing arrangements**

- 17.1 If the Customer wishes to enter into any leasing or similar financial arrangement in relation to the Proposal, it will consult with Quicklink and obtain their approval of the proposed agreements before executing them.
- 19.2 Such financial arrangements will usually contemplate the Customer disposing of, and giving good title to the Hardware and/or Software to the relevant finance company, which is prohibited by the terms of the Hardware Sale section and the Software Licence sections of the Agreements and the Customer specifically does not have Quicklink's consent for the same if it has not consulted Quicklink and obtained Quicklink's agreement in advance. If notwithstanding, the Customer purports to enter into financing arrangements, it will not be discharged from its payment obligations under the Agreements and Quicklink may exercise its rights to repossess the Hardware and/or the Software. Furthermore, the Customer undertakes to stand as guarantor (as primary obligor) of full payment of all monies due under the Agreements until such time as Quicklink has received full payment pursuant to the terms of the relevant financing agreements.

## **18 Patent and Copyright Indemnity**

- 18.1 Quicklink will indemnify the Customer against liability and/or any judgment or any settlement made by Quicklink under Clause 18.1 (c) for infringement of United Kingdom patents, registered designs, copyright or trademarks arising from the Customer's normal use of the Hardware and/or the Sold Software subject however to the following conditions:
- (a) The Customer must notify Quicklink promptly in writing of any allegation of infringement.
  - (b) The Customer must make no admission of liability without Quicklink's consent.
  - (c) The Customer must, at Quicklink's request, allow Quicklink to conduct and/or settle all negotiations and litigation and must give Quicklink promptly all reasonable assistance in connection therewith. The costs incurred or recovered in such negotiation or litigation shall be for Quicklink's account.
  - (d) This indemnity will not apply to any infringement arising from the use of the Hardware and/or Software in combination with equipment and/or programs not supplied by Quicklink or from the adaptation or modification of the Hardware without the previous consent of Quicklink.
- 18.2 This indemnity states Quicklink's entire liability in respect of patents, design rights, registered designs, copyright and trademarks.
- 18.3 Quicklink's liability under this clause in respect of the aggregate of damages and costs awarded against the Customer shall not exceed the lower of £100,000 and the invoice price of the Hardware and Software.
- 18.4 If at any time any allegation of infringement of United Kingdom patents, registered designs, copyright or trademarks is made in respect of the Hardware or the Software or in Quicklink's reasonable opinion is likely to be made, then Quicklink may at its own expense modify or replace the Hardware and/or the Software so as to avoid infringement, Quicklink making good to the Customer any loss of use during modification or replacement of the Hardware or procure for the Customer the right to continue using such Hardware or Software. In the event that neither of these options is possible Quicklink may at its option accept the return of such Hardware and/or Software and (a) grant the Customer a credit equal to the value of such Hardware and/or Software taking into account depreciation (to be computed on the basis of equal amounts of the price of such Hardware and/or Software per year over a five-year period); and (b) refund such part of the maintenance charges and software support fees as is attributable to the unexpired term of the then current maintenance period.
- 18.5 Quicklink specifically excludes all and any indemnities in respect of the use of Open Source Software by the Customer and the Customer accepts and uses the same entirely at its own risk.

### **HARDWARE MAINTENANCE SECTION**

## **19 Definitions relevant to this Section**

"Hardware Maintenance" means Curative Maintenance and Mandatory Engineering Changes as defined in Clause 20;

"Maintenance Charges" is defined in Clause 21;

"Excluded Services" is defined in Clause 22;

## **20 Hardware Maintenance**

Quicklink will provide Hardware Maintenance in respect of the Hardware as follows:

- 20.1 on request from the Customer, inspection testing and diagnosis remotely of any fault reported in an item of Hardware; and
- 20.2 repairing, replacing parts, cleaning, lubrication or adjustment, as Quicklink shall judge necessary to remedy a fault referred to above; ("Curative Maintenance")
- 20.3 implementing such mandatory alterations, adjustments, additions or modification to the Hardware as Quicklink shall from time to time prescribe ("Mandatory Engineering Changes")
- 20.4 If the Hardware requires either Curative Maintenance or Mandatory Engineering Changes which cannot be carried out remotely the Customer will upon receipt of notification from Quicklink (a "Return Maintenance Agreement") ship the Hardware back to Quicklink for the work to be undertaken subject to clause 22 below. The cost of shipping will be borne by the Customer over and above the Maintenance Charges.

## **21. Payment of Maintenance Charges and Term**

- 21.1 The Customer shall pay the charges for Hardware Maintenance, which are set out in the Proposal in respect of each item of Hardware (the "Maintenance Charges") Payment (less any deposit paid) is due on receipt of invoice.
- 21.2 Hardware Maintenance shall commence on the Delivery Date of the Hardware and continue in force for 1 year thereafter unless terminated earlier in accordance with clause 37 or suspended in accordance with clause 38.

## **22. Excluded Services**

The Hardware Maintenance service shall not include the following services ("Excluded Services"):

- 22.1 the correction of any fault due to:
  - (a) the Customer's failure to maintain a suitable environment for the Hardware;
  - (b) the Customer's gross neglect or misuse of the Hardware or any serious or repeated failure to operate the Hardware correctly;
  - (c) the alteration or maintenance of the Hardware by any party other than Quicklink without Quicklink's prior consent;
  - (d) the relocation of the Hardware except if performed by or under the direction of Quicklink;
  - (e) the use of defective or inappropriate supplies with the Hardware;
  - (f) any defect or error in any software used or in association with the Hardware;
  - (g) any accident or disaster affecting the Hardware including without limitation fire, flood, water, wind, lightning, transportation, vandalism or burglary; or the Customer's failure inability or refusal to afford Quicklink's personnel proper access to the Hardware;
  - (h) the Hardware has been used outside the specifications specified by the Manufacturer;
  - (i) the Customer has failed to notify Quicklink of any defect or suspected defect in the Hardware immediately the same comes to the knowledge of the Customer;

- (j) the Hardware in the opinion of Quicklink is beyond economical repair.
- 22.2 the painting or refinishing of the Hardware and refurbishment or repair of the Hardware casing;
- 22.3 work requested by the Customer for re-arrangement including without limitation providing additional wiring, moving cabling the relocation or transportation of the Hardware, or repairing a previously prepared site to make it operational;
- 22.4 electrical work external to the Hardware;
- 22.5 the provision of consumables for use in association with the Hardware;
- 22.6 with the exception of Mandatory Engineering Changes any modification or alteration of or attachment to the Hardware or removal of the same;
- 22.7 any services provided in circumstances where a reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary;
- 22.8 the replacement of flat screen displays or liquid crystal displays;
- 22.9 adding or removing accessories, attachments or other devices;
- 22.10 the repair of damage resulting from accident, transportation, neglect or misuse, lightning, failure or fluctuation of electrical power, air conditioning or humidity control, telephone line failure, failure of foreign interconnecting equipment, operator error or causes arising other than as a result of ordinary use;
- 22.11 any other matters which are not within the normal course of hardware maintenance and/or which do not arise from normal use of the equipment.

### **SOFTWARE SUPPORT SECTION**

#### **23 Definitions relevant to this Section**

- "Software Support" means the services defined in Clause 24;
- "Software Support Fee" is defined in Clause 25;
- "Excluded Services" is defined in Clause 26.

#### **24. Software Support**

Quicklink will provide technical support services ("Software Support") in respect of the Software at the Site, as follows:

- 24.1 upon request by the Customer, advice by telephone or by post or by email on the lawful use of the Software including the interoperability of the Software with other programs;
- 24.2 upon request by the Customer the diagnosis and rectification of faults in the Sold Software remotely by issuing fixes for the Sold Software and making any necessary consequential amendments to the Documentation;
- 24.3 upon request by the Customer, in respect of Quicklink Software only, the supply, by way of media or by being available for download by the Customer from Quicklink's support Web site (as Quicklink shall decide), of the latest numbered release of Quicklink's Software of the same name and numbered sequence as licensed to the Customer.

- 24.4 Upon request by the Customer, for Open Source Software (and only if the customer has elected to pay for support in respect thereof) advice and assistance in identifying and seeking a solution for any faults in that software but without Quicklink being liable in any way for any failure in that software or any inability to provide rectification to any fault.

**25. Payment of Software Support Fee and Term**

- 25.1 The Customer shall pay the charges for Software Support, which, with the exception of those items referred to in clause 25.2, are set out in the Proposal in respect of each item of Software (the "Software Support Fee") Payment (less any deposit) is due within 30 days of delivery of the invoice.
- 25.2 In addition to the amount specified in the Proposal, the Customer shall pay any additional charges (but at cost only) of any new component(s) purchased by Quicklink during the term to maintain and improve the performance and/or functionality of the Quicklink Software. Payment will be due within 30 days of delivery of the invoice.
- 25.3 Software Support shall commence on the Delivery Date of the Software and continue in force for the duration of the valid contract thereafter unless terminated earlier in accordance with clause 37 or suspended in accordance with clause 38.

**26. Excluded Services**

- 26.1 Software Support shall not include the following services ("Excluded Services")

26.1.1 The diagnosis or rectification of any fault resulting from the following:

- (1) the gross neglect or serious or repeated misuse or operation of the Software, the Documentation or the Hardware;
- (2) the modification of the Software or its merger (in whole or in part) with any other software;
- (3) the use of the Software on equipment other than the Hardware save for such other hardware as has been agreed in writing with Quicklink;
- (4) the failure by the Customer to implement recommendations or solutions previously advised by Quicklink;
- (5) any repair adjustment alteration or modification of the Software by any person other than Quicklink without Quicklink's prior consent;
- (6) any breach by the Customer of any of its obligations relating to Software Support;
- (7) the use of the Software for a purpose for which it was not designed;
- (8) the correction of software or data corruption caused by a virus howsoever introduced.

26.1.2 Any services provided in circumstances where a reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary; or

26.1.3 Save to the extent that the Customer has elected to pay for such support (as identified in the Proposal)

(1) the provision of on-site attendance for the purpose of installing or training upon new releases or upgrades of existing versions of Quicklink Software whether the upgraded or newly released software is provided as part of the service under this contract or not;

(2) the provision of any new releases upgrades or new versions of Third Party Software and the cost of installation or training in relation to the same.

**GENERAL CONDITIONS APPLICABLE TO  
HARDWARE MAINTENANCE AND SOFTWARE SUPPORT**

**27. Quicklink Maintenance Charges**

27.1 The Maintenance Charges and Software Support Fee shall not include the cost of any Excluded Services.

**28. Times for Hardware Maintenance and Software Support**

28.1 Curative Maintenance and Software Support will be provided upon request between the hours of 8.30 am and 6.30 pm ("Silver Service") Monday through Friday or 8.30 am to 10.00 pm ("Gold Service") Monday through Sunday (excluding bank and other public holidays). Quicklink will use its reasonable endeavours to respond to a request for Curative Maintenance within 8 working hours and to undertake the Curative Maintenance as soon as practicable thereafter.

28.2 To obtain service Customers should telephone the number stated in the Hardware and Software Support plan certificate. Email contact should only be used for non-urgent enquiries as emails are only maintained during UK office hours.

28.3 Mandatory Engineering Changes will be provided at times from time to time agreed between Quicklink and the Customer.

28.4 Quicklink shall have no obligation to provide the Services outside the hours specified in Clause 28.1 unless otherwise specified in this contract.

**29. Excluded Services**

Quicklink will at the Customer's request provide Excluded Services but shall be entitled to charge on a time and materials basis at Quicklink's then prevailing rates (or in the case of new releases for the Software, the upgrade/new release price) and such charges will be due and payable 7 days from the date of Quicklink's invoice which will be issued monthly in arrears.

**30. Customer's Obligations**

30.1 The Customer will provide Quicklink, its employees, agents and sub-contractors:

30.1.1 in order to allow Quicklink to perform Hardware Maintenance and Software Support;

(a) with access to all parts of the Customer's premises reasonably required by Quicklink;

(b) with all facilities reasonably requested at the Customer's premises by Quicklink;

- (c) with full access to the Hardware and the Software and all relevant documentation and other information; and in particular will install and maintain in operational condition at the Customer's cost remote diagnostic software approved from time to time by Quicklink;
- 30.1.2 with proper health and safety cover by taking all reasonable precautions to protect them whilst on the Customer's premises.
- 30.2 It is the responsibility of the Customer to maintain the integrity of its data and to ensure that proper and appropriate back-ups are retained. Quicklink is not responsible for the correction or restoration of any data howsoever lost corrupted or damaged.
- 30.3 The Customer will follow Quicklink's reasonable technical instructions and follow any reasonable troubleshooting procedure requested and co-operate and work with Quicklink to remedy any technical issues.

### **31. Quicklink's Hardware Maintenance and Software Support Warranty**

#### **31.1 Quicklink warrants and undertakes:**

- (1) to perform Hardware Maintenance and Software Support and (if any) Excluded Services with reasonable care and skill and within a reasonable time of the Customer's request;
- (2) that any replacement parts for the Hardware will be of satisfactory quality and fit for their purpose and that the Customer will obtain free and unencumbered title to them and will enjoy quiet possession of them. Without prejudice to the above warranty, Quicklink reserves the right to supply secondhand or reconditioned replacement parts.
- 31.2 Quicklink does not warrant that the Hardware Maintenance or Software Support or (if any) the Excluded Services will cause the Hardware or the Software to operate without interruption or error. Quicklink's warranty under Clause 31.1 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law as to Hardware Maintenance or Software Support or (if any) the Excluded Services.

### **32. Customer's Warranty**

- 32.1 The Customer warrants and undertakes that it owns the Hardware, that (unless licensed by Quicklink) it is duly licensed to use the Software, that it is not in breach of any relevant software licence and that it has full authority to permit Quicklink to perform the Hardware Maintenance, the Software Support and (if any) the Excluded Services.
- 32.2 The Customer undertakes to indemnify Quicklink against any loss or damage which it suffers as a result of a breach of Clause 32.1.

### **33. Duration of Hardware Maintenance and Software Support**

Hardware Maintenance and Software Support shall commence on the Delivery Date of the Hardware and/or Software and will remain in force for the duration of the valid contract thereafter unless terminated earlier pursuant to Clause 37 or suspended in accordance with Clause 38

## GENERAL CONDITIONS APPLICABLE THROUGHOUT

### **34. VAT other charges and interest on Late Payment**

- 34.1 All prices are quoted exclusive of value added tax (VAT) and an obligation to pay any sums under the Agreements includes an obligation to pay any VAT chargeable on that payment.
- 34.2 In addition to VAT the obligation to pay any sums under the Agreements includes an obligation on the Customer to pay any local taxes or import duties arising from the delivery of the Hardware or Software to the Site and any bank charges arising from the customer electing to pay by international money transfer or letter of credit.
- 34.3 Quicklink reserves the right to charge the Customer interest (after or before any judgement) in respect of any late payments, at 5% per month from the due date until the date of actual payment together with any administration fees incurred by Quicklink as a result of this. Administration fees will be charged on all occasions where contact with the customer is made as a result of non payment.

### **35. Supply**

- 35.1 If the Customer accepts any Hardware and/or Software delivered or Services supplied to the Customer by Quicklink before a binding agreement for the supply thereof is in existence then the Customer's acceptance thereof shall be deemed to constitute acceptance of the terms of this Agreement.
- 35.2 Any of the Customer's parts software or documentation replaced by Quicklink whether in connection with the supply or the support or maintenance of the Hardware or Software or otherwise shall become the property of Quicklink.
- 35.3 Any part, software or documentation supplied by Quicklink by way of an addition to or replacement for any goods supplied hereunder shall be deemed to form part of such goods upon such supply.

### **36. Confidentiality**

- 36.1 Quicklink and the Customer each undertake to keep secret all confidential information (written or oral) concerning the other's business and affairs which is obtained or received in connection with any of the Agreements, save to the extent that the information is a) trivial or obvious b) already in its possession other than as a result of a breach of this clause or c) in the public domain other than as a result of a breach of this clause.
- 36.2 The Customer may supply copies of its data to Quicklink from time to time so as to enable Quicklink to carry out its responsibilities under this contract. Insofar as it is necessary to work on data correction or manipulation as part of the services to be delivered and such services have to be undertaken away from the Customer's Site, then Quicklink acknowledges and understands that such data may amount to personal data within the meaning of the Data Protection Act 1998 and that it may be operating as and have the responsibilities of a Data Processor for the purposes of that Act. The Customer warrants that any such personal data is not held by nor is normally processed by them in breach of the terms of that Act and indemnifies Quicklink from any claims or expense arising therefrom.

### **37. Termination -Events of Default and Insolvency**

- 37.1 If any of the following events (each an "Event of Default") occurs, any (or all) of the Agreements may be terminated:
- (a) by Quicklink giving notice of termination (effective on service), if the Customer fails to pay any sum within 28 days of the due date stated in the Proposal, provided the Customer has been served a written demand;
  - (b) by either party giving notice of termination (effective on service) if the other commits any material breach of any provision of the Agreements which (if the breach is capable of remedy) has not been remedied within 28 days of a written request for remedy.
- 37.2 Any of the Agreements except for the Software Licence may be terminated by either party giving notice of termination (effective on service) if the other is or becomes subject to an "Event of Insolvency", which shall mean the convening of a creditors' meeting, a proposal being made for a voluntary arrangement within Part I Insolvency Act 1986, a proposal for any arrangement with creditors or assignment for the benefit of creditors, inability to pay its debts within Section 123 Insolvency Act 1986, appointment of a trustee, receiver, administrative receiver or similar officer over all or any part of its business or assets, presentation of a petition, convening a meeting to consider a resolution or taking other steps for winding up or to make an administration order (other than for the purpose of amalgamation or reconstruction).
- 37.3 Any termination shall be without prejudice to any other rights or remedies and shall not affect any accrued rights or liabilities of either party.
- 37.4 The maintenance contract will automatically renew on the anniversary unless a minimum notice period of 30 days is provided to Quicklink in writing prior to the expiry date.

### **38. Suspension**

- 38.1 Quicklink reserves the right to suspend service or assistance to the Customer including the use of Quicklink Software by the Customer or completion of its obligations under the Hardware sale and Software sale sections of this contract for so long as the Customer is in default of any of its material obligations (including payment) under the terms of the Agreements or any other agreement with Quicklink.
- 38.2 In particular Quicklink reserves the right to suspend the use of Quicklink Software in the event of non-payment of sums due by the Customer for whatever reason in respect of Hardware and Software delivery and installation and the delivery of services and in respect of Hardware or Software maintenance, or the non-payment of sums due on termination of the maintenance provisions hereof in accordance with Clause [33].

### **39. Force Majeure**

- 39.1 Neither Quicklink nor the Customer shall be liable for any default resulting from causes beyond its reasonable control (an "Event of Force Majeure"). The party affected by an Event of Force Majeure shall immediately on becoming aware of it, give notice to the other party describing the circumstances in reasonable detail.
- 39.2 If either party is unable for more than eight weeks to comply with its obligations due to an Event of Force Majeure, then the other party shall be entitled to terminate the relevant part(s) of the Agreements. Except for the consequences of termination specifically provided for under the

Agreements, no liability shall arise solely as a result of termination by reason of an Event of Force Majeure.

**40. Waiver**

If either Quicklink or the Customer fails to enforce any of its rights under the Agreements, this shall not affect any other rights or be deemed to be a continuing waiver.

**41. Notices**

Any written communication required to be given under the Agreements shall be delivered by hand or sent by first class post to the address of the relevant party set out on the front cover of these Agreements (or such other address as may have been similarly notified). The notice or communication shall be deemed duly served on actual delivery (if delivered by hand) or forty-eight hours after posting (if sent by post).

**41. Invalidity and Severability**

If any provision of the Agreements is found by a court or other competent body to be invalid or unenforceable, such finding will not affect any other provisions.

**42. Entire Agreement and exclusion of liability**

42.1 The Agreements constitute the entire agreement between Quicklink and the Customer in relation to their subject matter and supersede all prior agreements. No director, employee, sub-contractor or agent of Quicklink is authorised to make any representation warranty or undertaking which is not contained in the Agreements and the Customer acknowledges that he has not relied on any such representation warranty or undertaking, save for any which have been made in writing and are annexed to any of the Agreements.

42.2 Save as stated in any warranties or indemnities specifically given above, Quicklink shall have no liability for loss injury or damage of any kind whether direct or consequential arising out of the Agreements.

42.3 This Agreement and all rights and obligations hereunder shall for all purposes be treated and construed as being separate and apart from any other Agreement or Agreements or any rights and obligations thereunder save only in so far as express provision requires to the contrary.

42.4 If the Customer accepts any Hardware and/or Software delivered or Services supplied to the Customer by Quicklink before a binding agreement for the supply of such Hardware and/or Software is in existence then the Customer's acceptance of such Hardware and/or Software shall be deemed to constitute acceptance of the terms hereof.

**43. Successors and Assignment**

43.1 The Customer shall not be entitled to assign any rights or obligations under any of the Agreements without the prior written consent of Quicklink, such consent not to be unreasonably withheld.

43.2 The Agreements shall be binding upon and endure for the benefit of the successors in title and the permitted assignees of Quicklink and the Customer.

**44. Law**

The Agreements shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.