

# AdaptiveComms IT Support Service Terms & Conditions

## 1. Services:

Adaptive Communication Solutions Limited, hereafter "AdaptiveComms" will provide support and other services described in this IT Support Agreement (the "Agreement") for the hardware and software listed as "the services" in the Agreement (collectively and individually known as the "Product") purchased in the UK. Support services will be delivered by telephone, remote login, and onsite between the hours of 9.00am and 5.00pm, Monday to Friday. Except as specified below in clause 5 and 7 to "the customer" as defined in clause 2.

## 2. Customer:

As used herein "Customer" or "The customer" refers to the Corporate, public or charitable body described in "customer information" in this agreement or any AdaptiveComms IT services agreement or order form signed by an employee of the company.

## 3. Charges and commencement of agreement:

Customer will pay monthly in advance for support as described in "order summary" each additional PC added commencing from after the start of this agreement will be charged at £17 per PC, each additional server will be charged at £90 per Server. Customer will be liable to pay all applicable taxes.

The customer is responsible for paying for all services billed to you them by AdaptiveComms

Where a direct debit is unpaid due to insufficient funds or cancellation, a £35.00 administration charge will be included on your next monthly bill.

Payments are to be made by you without set-off or deduction and if you fail to pay any sum due, we shall be entitled to charge interest on the amount due at the rate of four percent (8%) above the Bank of England official bank rate paid on commercial bank reserves prevailing from time to time calculated from the due date until collection.

Cancellation of the direct debit or standing order does not constitute notice of cancellation on termination of the contract.

You are protected at all times by the direct debit guarantee

AdaptiveComms reserves the right to perform a credit check with no prior notice on you, and to pass your credit history with 21cns on to the credit agencies and/or the Court.

AdaptiveComms may, at its sole discretion and at any time, impose a credit limit on your account. Any credit limit imposed can be amended without prior notice. If you exceed any such credit limit, AdaptiveComms may demand immediate payment of the charges and/or suspend the service; and you will still be responsible for all charges incurred including those exceeding the credit limit.

AdaptiveComms reserves the right to request from you at any time a deposit, paid in advance, should periodical credit checks reveal an insufficient credit scoring or County Court Judgment or if unusual usage and call charges are incurred. Should this request not be met within 30 days of notification by AdaptiveComms, AdaptiveComms reserves the right to

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terminate the contract and to demand full and immediate payment of any outstanding balance.

AdaptiveComms will charge a £199 disconnection fee should your agreement with AdaptiveComms be terminated due to your non-payment.

Any invoices which are disputed must be done so within 3 months of the Invoice date otherwise invoices will be deemed to be correct. If you wish to dispute any invoice you must write to us and provide us with (i) nature and reason for dispute, (ii) the amount in dispute, (iii) any evidence to support the disputed amount.

#### **4. Eligibility:**

(a) To be eligible for support, the hardware the product is utilised on must be at current specified revision levels and, in AdaptiveComms 's reasonable opinion, in good operating condition.

(b) Any relocation of product is Customer's responsibility and may result in additional support charges and modified service response times.

(c) Support services may not be available for products if they are moved outside the country where this Agreement is purchased.

#### **5. Response times:**

AdaptiveComms will during the normal working day, as defined in clause 1, acknowledge all faults immediately on receipt from the customer. AdaptiveComms will make best efforts to respond to all faults and queries as quickly as possible. The following guidelines set out our minimum service levels to respond to faults according to the response times and example definitions set out below:

Due to the nature of support AdaptiveComms cannot guarantee either response times or fixes. In the event that remote support cannot fix the problem, AdaptiveComms will aim dispatch an engineer within 8 working hours of the decision that the fault needs on-site support.

#### **6. Limitations of Liability and Remedies:**

Except to the extent that the following limitation of liability and remedies is prohibited or limited by local law, the following limitation of liability and remedies applies. For any material breach of this Agreement by AdaptiveComms, Customer's remedy and AdaptiveComms liability will be limited to a maximum refund of one month of support costs in any 12 month period. AdaptiveComms will not be liable for performance delays or for non-performance due to causes beyond its reasonable control.

To the extent AdaptiveComms is held legally liable to Customer, AdaptiveComms liability is limited to damages for bodily injury and damages to tangible property up to the limit of £10,000 (U.K.) and other direct damages for any claim based on a material breach of support services, up to a maximum of the support charges paid by Customer for this Agreement for the products at issue. SUBJECT TO LOCAL LAW, THE REMEDIES PROVIDED IN THIS AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE RECOURSE.

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REMEDIES: IN NO EVENT WILL AdaptiveComms, ITS AFFILIATES, ITS SUBCONTRACTORS, OR SUPPLIERS BE LIABLE FOR LOSS OF DATA OR FOR DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING DOWNTIME COSTS OR LOST PROFIT), OR OTHER DAMAGE WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE.

## 7. Limitations of Service:

If remote support has been selected then following installation the support offered in this agreement is remote and any on site support required by the customer will be chargeable at AdaptiveComms standard rates available on request.

AdaptiveComms does not provide support for products that Customer does not allow AdaptiveComms to incorporate modifications. Customer or an approved designated contact is responsible for removing any products not eligible for support to allow AdaptiveComms to perform support services. If support services are made more difficult because of such products, AdaptiveComms will charge Customer for the extra work at AdaptiveComms standard service rates, we will not be responsible for reinstalling 3<sup>rd</sup> party software.

Unless otherwise specified, this Agreement excludes the provision, return/replacement, and installation by AdaptiveComms of any hardware, software, consumables, user replacement parts, maintenance kits, or other consumable items including, but not limited to, accessories, operating supplies, magnetic media, paper, print heads, ribbons, toner, a/c adapters, and batteries.

Unless otherwise specified, services do not cover any damage or failure caused by: (i) use of non- AdaptiveComms media, supplies and other products; (ii) site conditions that do not conform to AdaptiveComms site specifications; (iii) neglect, improper use, fire or water damage, electrical disturbances, transportation by Customer (and in the case of AdaptiveComms Authorized Representatives, by owners or users of the supported system), work or modification by people other than AdaptiveComms employees or AdaptiveComms Authorised Representatives, or other causes beyond AdaptiveComms control; or (iv) inability of products not supplied by AdaptiveComms in Customer's supported environment to correctly process, provide or receive date data (i.e., representations for month, day, and year), or the inability of these products to properly exchange date data with any products covered by AdaptiveComms support services. Complete resolution of some problems may be beyond the control of AdaptiveComms MMS and thus outside the scope of these services.

Non- AdaptiveComms supplied products: AdaptiveComms is not liable for the performance or non-performance of third party vendors, their products, or their support services. AdaptiveComms decision on how long to offer AdaptiveComms support on selected non-AdaptiveComms products is final.

## 8. Customer Responsibilities:

The Customer is responsible for registering users or new products to be supported by AdaptiveComms as directed by AdaptiveComms. In the event a covered product changes location or the support service is transferred with the sale of a used hardware product, registration (or a proper adjustment to existing AdaptiveComms registration) is to occur within ten days of purchase from previous owner. AdaptiveComms IS NOT OBLIGATED TO

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PROVIDE SUPPORT SERVICES IF CUSTOMER DOES NOT REGISTER THE PRODUCT AS STATED HEREIN.

The customer will make all reasonable efforts to support and cooperate with AdaptiveComms in resolving the problem remotely, for example, starting and executing self-tests or diagnostic programs, providing all necessary information, or performing basic remedial activities upon AdaptiveComms request.

The customer will ensure that AdaptiveComms service personnel are provided with sufficient electrical power to perform necessary hardware maintenance and operating supplies used during normal operation.

The customer is required to grant any reasonable request from an AdaptiveComms engineer to ensure that engineers safety whilst at the customers premises.

The customer is responsible for the security of its proprietary and confidential information and for maintaining a procedure external to the hardware products for reconstruction of lost, or altered files, data, or programs.

The customer must notify AdaptiveComms if any hardware products serviced are being used in an environment that poses a potential health hazard to AdaptiveComms employees or subcontractors; AdaptiveComms may require Customer to maintain such products under AdaptiveComms supervision.

The customer must ensure that an adult representative is present when AdaptiveComms is providing services at Customer's designated location or by telephone.

The customer will ensure remote (internet) access is available for the purposes of AdaptiveComms providing remote support. Customer will allow AdaptiveComms to keep system and network diagnostic program resident on the covered product and provide AdaptiveComms login access for the exclusive purpose of performing diagnostics.

The customer acknowledges that Customer has no ownership interest in diagnostic software provided by AdaptiveComms and that AdaptiveComms will remove these diagnostic programs and any AdaptiveComms loaned modems or other equipment upon termination of this Agreement. When capable, the covered product must be configured to permit access to one voice-grade telephone line and one data-quality telephone line; both must have terminations located near the covered product. Upon AdaptiveComms request, Customer will run AdaptiveComms -supplied diagnostic programs before having a hardware product serviced under this Agreement.

The customer shall indemnify 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited arising out of or in connection with breach by the customer or other act or omission by the customer under or in relation to this agreement.

Non-Solicitation: During the term of this Agreement and for 36 months after any termination of this Agreement, the customer will not, without the prior written consent of the AdaptiveComms, either directly or indirectly, on the customer's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed

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by the AdaptiveComms, Adaptive Communication Solutions Ltd and TwentyFirst Century Networks Ltd.

## **9. Transfer of Service:**

This Agreement may only be assigned in writing, with the written permission of a director of AdaptiveComms.

## **10. Term:**

(a) This Agreement will begin as per the definition in clause 3 of this Agreement and continue for a minimum period as set out in customer agreement (36 months unless otherwise stated).

(b) in the event AdaptiveComms choose to no longer support any individual product or element of any product covered by this agreement due to a customer breach of any clause in this agreement which the customer has not remedied it with 30 days of email notification of the breach the agreement will still be chargeable in full for the entire term.

## **11. Termination:**

Customer may terminate this Agreement by notifying AdaptiveComms via letter at any time after the initial 36 month period by giving ninety days notice in writing. AdaptiveComms may terminate at any time if Customer fails to perform or observe any condition of this Agreement with AdaptiveComms.

## **12. Early termination:**

If the customer wishes to terminate the agreement prior to the end of the current minimum term the customer will be liable to pay 100% of all monies outstanding to the end of the agreement plus any relevant notice period (90 days).

## **13. Governing Laws:**

Any disputes arising in connection with this Agreement will be governed by the laws of the UK.

## **14. Entire Agreement:**

The terms and conditions of this Agreement constitute the entire understanding between the parties relating to the provision of services described herein and will supersede any previous communication, representation or agreement whether oral or written. Customer's additional or different terms and conditions will not apply. Customer's acceptance of this Agreement is deemed to occur upon Customer's purchase of service, or failure to give notice of termination to place if purchase within thirty days or AdaptiveComms provision of any support services. No change of any of the terms and conditions will be valid unless in writing signed by an authorised representative of each party.