

TERMS AND CONDITIONS This document sets out the terms and conditions on which Delstree (“Delstree”) supplies Software and/or Services. An agreement to supply is (and only is) made on Delstree and a customer signing a Contract (defined below). Signature of a Contract constitutes agreement between Delstree and the Customer for the supply by Delstree to the Customer of the Software and/or Services referred to in it on the terms and conditions of this document.

1 – DEFINITIONS

In this Contract the following terms shall have the meanings set out below: “Contract” means a document entitled “Delstree Limited Contract Document” issued by Delstree, identifying the computer Software and/or Services to be supplied by Delstree to the Customer and signed by or on behalf of Delstree and the Customer. “Delstree” means Delstree Limited “Delstree Software” means those Packages proprietary to Delstree and supplied under this Contract in either unmodified or modified form “Customer” means the party to whom Delstree is supplying the Software and/or Services under this Contract “Documentation” means information supplied with the Delstree Software in printed or machine readable form “Equipment” means the Customer’s computer system on which the Software is to function comprising such equipment items as Delstree may have approved “Licensed Materials” means the Delstree Software and the Documentation “Licence” means the licence granted to the Customer at clause 3.1 of this Contract “Maintenance” means those maintenance services to be provided or procured to be provided by Delstree in respect of the Software under the terms of this Contract “Maintenance Charge” means the periodic charge for the Maintenance specified in this Contract as increased from time to time pursuant to the relevant clauses of this Contract “Normal Working Hours” means the hours between 09:00 and 17:30 on each working day “Packages” means computer Software produced to provide general solutions to tasks which are intended to be the subject matter of such Software but not specifically produced (in its entirety) to comply with any specific need of the Customer “Rights” means copyright, trademarks, registered designs, patents and any other intellectual property rights arising in any country and all rights in any applicable trade secrets “Services” means the Maintenance, the Training and any other services which Delstree is to provide to the Customer under this Contract “Site” means the location at a premises owned and/or controlled by the Customer which has been approved by Delstree and at which the Software is to be installed and used “Software” means the Delstree Software and the Third Party Software “Third Party Software” means Packages other than Delstree Software referred to in this Contract “Training” means the training services to be provided by Delstree “Use Licensed Materials” means to use Delstree Software, to read and possess the Documentation for the use of the Delstree Software and to possess the media upon which the Delstree Software is stored and delivered to the Customer “working day” means any weekday other than a statutory, bank or public holiday 1.2 – In this Contract: 1.2.1 – reference to any statutory provision includes a reference to that provision as from time to time amended, extended or re-enacted; 1.2.2 – words importing the singular include the plural and words importing persons include bodies corporate and unincorporate and (in each case) vice versa; 1.2.3 – the headings of clauses are for ease of reference only and shall not affect the interpretation or construction of this Contract. Reference in this Contract to a clause shall be to a clause of this Contract unless otherwise stated.

2 – DELSTREE OBLIGATIONS

2.1 – Delstree shall supply the Software and/or the Services to the Customer at the prices set out in this Contract.

2.2 – Each party shall keep confidential all information that it may acquire from the other in the course of this Contract, use the same exclusively for the purposes of this Contract and disclose the same only to those of its employees, contractors and advisers to whom and to the extent that such disclosure is reasonably necessary for the purpose of this Contract.

2.3 – The obligations of clause 2.2 shall continue after termination of this Contract but shall not apply to information which:

2.3.1 – prior to a party's receipt was already in its possession and at its free disposal;

2.3.2 – is subsequently disclosed to the recipient without obligations of confidence by a third party who has not derived it directly or indirectly from the disclosing party;

2.3.3 – is or becomes generally available to the public through no act or default of the recipient, contractors or employees.

2.4 – Each party shall ensure that its employees, contractors and advisers who under this Contract gain access to information of the other to which clause 2.2 applies shall be made aware of and subject to those obligations.

2.5 – Notwithstanding anything else contained in this Contract, neither party shall be liable for delay in performing its obligations under this Contract if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party). Subject to the delaying party promptly notifying the other party in writing of the reasons for the delay (and its likely duration), the performance of such party's obligations shall be suspended whilst the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Contract and by law):

2.5.1 – any costs arising from such delay shall be borne by the party incurring the same;

2.5.2 – the non-delaying party may, if such delay lasts for more than 90 days, terminate the Contract forthwith on giving notice in writing to the other in which event neither party shall be liable to the other by reason of such termination save for any rights accruing prior to the occurrence of such event of delay.

3 – LICENCE OF DELSTREE SOFTWARE

3.1 – Subject to the Customer paying the licence fees specified in this Contract, Delstree grants to the Customer a non-exclusive and non-transferable licence (without the right to grant sub-licences) to Use Licensed Materials subject to the terms of this Contract. The Customer acknowledges that it is licensed to Use Licensed Materials under the express terms of this Contract but not further or otherwise.

3.2 – The Customer may use the Licensed Materials only at the Site or such alternative location as it shall first have notified to Delstree in writing.

3.3 – The Customer shall Use Licensed Materials for processing its own data for its own internal purposes only. The

Customer shall not permit any third party to use the Licensed Materials in any way whatever nor use the Licensed Materials on behalf of or for the benefit of any third party in any way whatever.

3.4 – The Customer shall keep exclusive possession of and control over the copies of the Licensed Materials provided to it and shall affect and maintain adequate security measures to safeguard the Licensed Materials from access or use by any unauthorised person.

3.5 – The Licence is limited to the use of the Licensed Materials upon one network and with concurrent access to the same by the maximum number of client PC's or laptops ("Clients") specified in this Contract. The Customer acknowledges that an additional licence fee is payable for each additional network and/or additional Client having access to the Licensed Materials.

3.6 – The Licensed Materials and all Rights therein (including Rights in any modifications carried out by or on behalf of the Customer) shall remain the property of Delstree. The Customer shall notify Delstree immediately if it becomes aware of any unauthorised use of the whole or any part of the Licensed Materials by any person. The Customer will permit Delstree to check the use of the Licensed Materials by the Customer at reasonable times and for that purpose Delstree, its employees and agents shall be entitled to enter any of the Customer's premises.

3.7 – The Customer may make only so many copies of the Software as are reasonably necessary for back up purposes. Such copies and the media on which they are stored shall be the property of Delstree and the Customer shall ensure that all such copies bear Delstree's proprietary notices. The Licence shall apply to all such copies as it applies to the Delstree Software. No copies may be made of the Documentation without Delstree's prior written consent.

3.8 If Licensed Materials cannot be used on and in conjunction with the Equipment because it is temporarily inoperable for any reason then Delstree, on being requested to do so, shall temporarily extend the license to permit installation on and use with any other equipment which satisfies Delstree's standard criteria until the Equipment is operating again provided that such equipment is at all times under the direct control of the Customer and is used only in conjunction with the same version of operating system software as that used on the Equipment. The use of Licensed Materials on and in conjunction with such temporary equipment shall be at the sole risk and responsibility of the Customer who shall indemnify Delstree against any loss or damage sustained or incurred by Delstree as a result. In particular Delstree shall not (unless otherwise agreed in writing by Delstree) have any liability under clause 9 in connection with such use.

3.9 – Save to the extent and in the circumstances expressly permitted by law, the Customer shall not alter, modify, adapt or translate the whole or any part of the Licensed Materials in any way whatever nor permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs nor decompile, disassemble or reverse engineer the same nor attempt to do any of such things.

4 – RISK AND TITLE

4.1 – For those parts of the Software supplied to Delstree on licence only or with any form of restricted title, the Customer shall only have such licence or title in such parts as Delstree is granted by the supplier of such parts. The Customer shall prior to delivery enter into such licence or other arrangement denoting any restriction on title or otherwise required by the supplier of such parts and shall abide by the terms of such arrangement. For Third Party

Software which is licensed to the user by virtue of the user removing the packaging from such software or by the user downloading such software onto a computer system, or any such other act or thing (the “Act”) as may be specified by the producer of such software the Customer irrevocably appoints Delstree to be its agent to undertake the Act and enter into such licence and the Customer shall abide by the terms of such licence as if it had undertaken the Act itself. The Customer shall fully indemnify Delstree against all costs, expenses or other liabilities which Delstree may incur or suffer as a result of the Customer’s non-compliance with this clause. For the avoidance of doubt, nothing contained in this clause shall be treated as relieving Delstree from any liability for any breach of the warranty given by Delstree under clause 7.4.1.

4.2 – Constituent parts of the Software shall be deemed accepted by the Customer upon that part’s delivery to the Customer.

5 – CUSTOMER OBLIGATIONS

The Customer shall:

5.1 – ensure (at its own expense) that any room or other location in which Equipment is to be placed has the power supply, equipment and environmental conditions which comply with the requirements of the Equipment manufacturer.

5.2 – provide promptly such office accommodation, computer equipment, office machinery and other facilities, staff and documentation as Delstree may from time to time reasonably require in connection with the provision of the Software and/or the Services.

5.3 – nominate a representative to liaise with Delstree on all matters relating to the Software and/or the Services and whose instructions, decisions and requests shall (where the same are agreed to by Delstree) be binding upon the Customer.

5.4 – ensure (at no cost to Delstree) that those members of its staff who are allocated for Training attend those training sessions held by Delstree at such places as may be agreed by Delstree.

5.5 – provide promptly all information, data and assistance which Delstree reasonably considers necessary in connection with the selection and/or modification of any Packages and the provision of the Services including, without prejudice to the generality of the foregoing, details of volumes of transactions, numbers of users, timescales relating to a requirement for processing data, proposed methods and sequences of operation and ageing requirements for data and the Customer shall allow Delstree to interview such of its employees as Delstree considers reasonably necessary in connection with any of the foregoing.

5.6 – ensure prior to the date on which Delstree anticipates starting any Services at the premises of the Customer that:

5.6.1 – such premises provide adequate working space and facilities as Delstree’s employees, contractors or agents may reasonably require to carry out such Services;

5.6.2 – access to and from the premises remains clear at all times in accordance with the Customer’s site and security policies;

5.6.3 – it has obtained all necessary consents to enable Delstree, its employees, contractors and agents to enter onto and remain upon the premises to carry out such Services; and

5.6.4 – such premises are safe and all Delstree employees, contractors and agents are protected from all reasonably foreseeable dangers, the Customer effecting and maintaining throughout the provision of such Services full insurance cover for the benefit of Delstree, its employees, contractors and agents against such risks.

6 – PRICES AND PAYMENT

6.1 – The Customer shall make payments for the provision of the Software and/or the Services to Delstree at such time or times as are set out in this Contract and without any deduction or set-off whatsoever. Where no such time or times are so specified payment for any such provision shall be made within 30 days of the date of Delstree's invoice therefore.

6.2 – If (otherwise than due to Delstree's default) the Software is not delivered to the Customer within 90 days of the date of signature of the Contract Delstree may substitute for the price specified in the Contract the price for that item at the date of delivery.

6.3 – If the Customer requests Delstree to carry out training for a duration in excess of that set out in this Contract the Customer shall pay Delstree its charges therefore at its then current rate for the provision of such training.

6.4 – All prices are quoted exclusive of value added tax or any replacement tax thereof ("VAT") and the Customer shall pay VAT at the appropriate rate from time to time in force in addition to payment of all other sums.

6.5 – If the Customer fails to make any payment to Delstree under this Contract on the due date then, without prejudice to any other right or remedy available to it, Delstree may suspend performance or further performance of any of its obligations under this Contract without liability to the Customer (Delstree's obligations under any timetable being amended accordingly to reflect such suspension); and upon serving written notice on the Customer of its intention so to do, charge the Customer interest (both before and after any judgement) on any sum outstanding on a daily basis at the rate of 4% per annum above the base rate of Barclays Bank UK plc (or such other clearing bank as Delstree may nominate) from time to time in force, such interest to be calculated from the due date for payment to the date of actual payment (both dates inclusive) compounded quarterly. Any interest payable shall be paid by the Customer on demand by Delstree.

6.6 – For the avoidance of doubt the Delstree Software is provided on a rental basis only and the Licence granted is subject to the Customer paying the fees specified in this Contract.

6.7 – The Customer may reduce the number of licences providing 2 months' notice in writing to Delstree's head office. A reduction in licenses will automatically move the Customer's remaining licenses onto Delstree's current price list. The Customer is only entitled to a licence reduction following twelve months from the installation date.

7 – WARRANTIES

7.1 – Delstree warrants that, as at the date of delivery to the Customer of any Delstree Software which has been modified by or on behalf of Delstree, such modifications will permit such software to perform in all material

respects those functions stated in Delstree's quotation (subject to such modified software having been used on the Equipment and in accordance with Delstree's instructions and recommendations made from time to time) PROVIDED ALWAYS that if Delstree shall be in breach of this warranty its sole liability shall be limited to making corrections or alterations to such modified software at its own cost in order to ensure that the same comply with the terms of this warranty.

7.2 – Delstree warrants that, as at the date of delivery, unmodified Delstree Software will provide, in all material respects, the facilities and functions stated in the relevant product specification provided always that if in breach of this warranty Delstree's sole liability shall be limited to making corrections or alterations to such software at its own cost in order that the same complies with this warranty.

7.4 – Delstree warrants to the Customer that:

7.4.1 – it has the right to grant all the rights and licences granted or purported to be granted under this Contract;

7.4.2 – the Customer's use and operation of the Software in accordance with the terms of this Contract shall not infringe any Rights (wherever arising) of any third party;

7.4.3 – the Services shall be performed with reasonable skill and care.

7.5 – EXCEPT AS PROVIDED IN THIS CLAUSE 7 AND WHERE OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT ALL CONDITIONS WARRANTIES AND OTHER TERMS IN RESPECT OF THE SOFTWARE AND/OR THE SERVICES WHETHER EXPRESS OR IMPLIED STATUTORY OR OTHERWISE ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

8 – LIABILITY

8.1 – The following provisions set out Delstree's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:

8.1.1 – any breach of its contractual obligations arising under this Contract; and

8.1.2 – any representation statement or tortious act or omission including negligence arising under or in connection with this Contract AND THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 8. 8.2 – Save in respect of death or personal injury caused by Delstree's negligence or liability under Part I of the Consumer Protection Act 1987 (which liability shall be unlimited) and save as aforesaid, the entire liability of Delstree (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer whether in respect of any breach of any term of this Contract or any representation, statement or tortious act or omission including negligence arising under or in connection with this Contract shall be as follows:

8.2.1 – in respect of direct damage to the physical property of the Customer resulting from the negligence of Delstree, its employees or agents, Delstree's liability shall not exceed £1m in respect of any one event or a series of connected events;

8.2.2 – in respect of the provision of Maintenance, Delstree's liability shall not exceed the Maintenance Charge paid or payable during the preceding 12 month period; and

8.2.3 – in all other cases, Delstree’s liability shall not exceed the price paid or payable in respect of the Software and the Services under this Contract.

8.3 – Under no circumstances shall Delstree be liable to the Customer in respect of any loss of profits, goodwill or any type of special, indirect or consequential loss (including business interruption, loss of business information or data or damage suffered by the Customer as a result of any action brought by a third party) even if such loss was reasonably foreseeable or Delstree had been advised at any time of the possibility of the Customer incurring the same.

8.4 – Delstree shall have no liability (whether for breach of warranty or representation or otherwise) arising from the Customer’s use of the Software (or any part thereof) other than in accordance with the provisions of this Contract or resulting in particular from:

8.4.1 – use of the Software with equipment other than the Equipment;

8.4.2 – the Customer’s noncompliance with any instruction or recommended procedure of Delstree; or

8.4.3 – any repair, adjustment, alteration or modification of any part of the Software not undertaken by Delstree or the merger, incorporation or use of any part of the Software with any software, hardware or other equipment not supplied or approved in writing by Delstree for use in connection with the Software.

8.5 – Under no circumstances shall Delstree be liable to reinstate or assist in the reinstatement of (or be responsible for the cost of reinstatement of) any data lost by the Customer, save where such data loss is caused by the provision of negligent Maintenance by Delstree, whereby Delstree shall be responsible for the restoration of secured data only (stored on media approved by Delstree) but not for any re-keying of data lost, which has not been secured on restorable tape or disk.

9 – INTELLECTUAL PROPERTY RIGHTS INDEMNITY

9.1 – Delstree shall procure the defence or (at its option) the settlement of any claim or legal action brought against the Customer alleging that the normal use of the Software infringes the Rights of any third party provided that:

9.1.1 – Delstree is given all information and assistance reasonably required by it and the sole authority to procure the defence or settlement of the claim;

9.1.2 – the Customer notifies Delstree promptly in writing of any alleged infringement and makes no admissions in respect thereof; and Delstree shall pay the reasonable costs of the Customer of providing information and assistance under this clause 9.1. 9.2 – If any claim arises to which clause 9.1 refers Delstree may at its option:

9.2.1 – procure for the Customer the right to continue to use the Software;

9.2.2 – modify the Software so that it is non-infringing; or

9.2.3 – remove the Software and refund the sums paid by the Customer in respect of the same. If any such claim results in an injunction restraining the Customer’s normal use of the Software and such injunction remains in place for a period of 28 days, Delstree shall exercise one of the options referred to above.

9.3 – Subject to the Customer complying with its obligations under clause 9.1, Delstree shall indemnify the Customer against

- (i) all damages and costs awarded against the Customer or agreed by Delstree by way of settlement and
- (ii) all losses, damages, costs and expenses incurred by the Customer arising by reason of any such infringement or alleged infringement.

9.4 – Delstree’s obligations under clauses 9.1 to 9.3 shall not apply if the claim results from:

9.4.1 – use of other than the current corrected level of Delstree Software where use of such level would avoid the infringement or alleged infringement;

9.4.2 – use of the Software or any part thereof with any equipment and/or software not supplied or approved in writing by Delstree for use in connection with the Software; or

9.4.3 – use of the Software other than as authorised under this Contract.

9.5 – The provisions of clauses 9.1 to 9.3 above state Delstree’s sole liability for infringement of third party Rights.

10 – SERVICES

10.1 – The Customer may at any time and from time to time prior to completion of the Services (other than Maintenance) issue change requests setting out in full detail the nature of any changes to the Software and/or Services (other than Maintenance) that it desires (a “Change Request”). Within 28 days of receipt of a Change Request, Delstree shall respond in writing stating whether it is prepared to do such work and, if so quoting any variation to the sums payable by the Customer under this Contract and the impact on any approximate timetable previously indicated by Delstree. This Contract shall be considered amended to take account of the changes requested by the Customer and the impact described by Delstree if Delstree indicates in writing that it is prepared to do the work and the Customer authorises Delstree in writing to undertake such changes within 5 working days of the Customer’s receipt of Delstree’s response. In no other circumstances shall a request to change the Software and/or the Services operate to amend this Contract. The Customer acknowledges that the need for Delstree to consider and prepare a response to a Change Request may result in a delay to the delivery of the Software and/or the provision of Services. Delstree shall be entitled to charge the Customer for its work in connection with a Change request in accordance with its standard rates from time to time in force.

10.2 – Training whether at the Customer’s premises or at Delstree’s premises is provided for up to 4 people per session. It is the responsibility of the Customer to appoint one, preferably two key users who will act as administrators of the system and will be able to answer simple internal queries and have a sound understanding of the system and its set up. It is the responsibility of the Customer to ensure that staff are made available without interruption for the duration of training session.

10.3 – Any Data Transfer costs are estimates. If data quality issues arise during the data transfer process and additional Services are required to transfer data, the additional Services will be invoiced on a time and materials basis at Delstree’s then normal daily rate plus expenses.

10.4 – Where the Services specified in a Contract includes for the creation of an Enhancement the following shall apply:

10.4.1 the price specified for the creation of an Enhancement is an estimate unless stated as fixed price based on requirements indicated by the Customer to Delstree and recorded by Delstree in a high-level requirement document.

10.4.2 – following signature of the Contract Delstree, in liaison with the Customer, shall prepare a detailed functional specification for the Enhancement for signature by the Customer by way of agreement. The specification shall include the price for the Enhancement. After the Customer has signed the specification Delstree shall create the Enhancement to conform with it.

10.4.3 – if the price stated in the specification for the creation of an Enhancement is higher than the estimate for it contained in the Contract the Customer may by notice to Delstree within 7 days of being notified of the price cancel that part of the contract which relates to the Enhancement. On such cancellation the Customer shall have no liability to Delstree in respect of the Enhancement other than to pay to Delstree the charge of Delstree for producing the high level requirement document and functional specification for the Enhancement.

10.4.4 – if at any time prior to commencement of programming of an Enhancement the Customer wishes to alter the agreed functional specification for it the Customer shall provide Delstree with full written particulars of the alteration together with such further information as Delstree may reasonably require. Delstree shall then submit to the Customer a written quotation for the alteration specifying what changes (if any) will be required to the price for the creation of the Enhancement and what other adjustments will be required to the Contract and to the functional specification.

10.4.5 – if within 7 days of its receipt of Delstree's quotation the Customer elects by notice to Delstree to accept it the Contract shall be amended in accordance with the quotation. If the Customer fails to accept the quotation of Delstree in the manner set out above the Customer's request for the alteration is deemed to have been withdrawn and the Contract continues unchanged except that Delstree shall be entitled to charge the Customer at its standard consultancy rate for considering the Customer's proposal and preparing its quotation.

10.4.6 – unless otherwise stated in the Contract the preparation of any functional specification and any programming required shall be carried out at such locations (including the Installation Address and the premises of Delstree) as Delstree considers appropriate.

10.5 – If Delstree is not supplying any part of the hardware then it is the Customer's responsibilities to ensure that the hardware software and connecting network are configured to the published Delstree standards. If Delstree needs to undertake any work to bring the Customer's equipment up to the required standard, the additional Services will be invoiced on a time and materials basis at Delstree's then normal daily rate plus expenses.

10.6 – Services costs exclude expenses. Travel and subsistence expenses (i.e. meals, hotels etc.) for on-site activities will be recharged to the Customer. Rail and air travel (where applicable) will be re-charged at standard and economy class rates respectively. Motor vehicle expenses will be re-charged at Delstree's current rate.

10.7 – The Services costs provided are estimates unless stated as fixed price and if additional Services are required, they can be purchased at Delstree's then normal daily rate. Services pricing contained in this Contract is for work

carried out during Normal Working Hours unless stated. Services are only provided Mondays through Fridays, except on UK bank holidays unless stated. A chargeable day equates to 6 hours excluding lunch breaks

10.8 – If you want to postpone an installation date, you must do so in writing. Less than 45 days' notice before the install begins: 50% install charge penalty. 6 working days' notice before the install begins: 100% install charge penalty. You must take the postponed installation within 3 months of the original install date. A postponed installation date cannot be postponed again or cancelled. If you postpone or cancel you will be charged 100% of the installation fee. If you have any questions regarding our terms and conditions we would be very happy to discuss them with you either by telephone (02476 328 151) or by email at web@delstree.com

10.9 – If Delstree is prevented (otherwise than due to its own default) from commencing work for over 90 days (or from completing within one year) from the date of the Contract it may at its option by notice to the Customer increase the price for the Services to Delstree's current rate. If the Services include the creation of an enhancement Delstree may terminate all its obligations to the Customer in respect of the enhancement whereupon the Customer shall pay to Delstree the charges of Delstree in respect of the work done by Delstree in relation to that Enhancement prior to such termination.

10.10 – Catalogues are provided on the basis that they are imported and updated onto the Customers own system by the Customer.

10.11 – The Catalogues Update Service is only provided if agreed in writing by both parties and is subject to an additional fee as shown in Delstree's current price list.

11 MAINTENANCE TERMS AND CONDITIONS

11.1 – Subject always to the payment of the periodic Maintenance Fee, Delstree shall provide the following support:

11.1.1 – Generally, the end user may obtain support via telephone to Delstree's Support Desk. The response to end user's reported problems will be determined on the basis of the priority of end user's query, as follows: Priority 1 (Very High) – Where the end user's productive system is down or the end user intends its Delstree Software to go live within 24 hours and the problem will prevent the end user from going live, target initial response time is 1 hour. Priority 2 (High) – Where use of the end user's productive system is hindered by severe loss of functionality but remains operational, target initial response time is 2 hours. Priority 3 (Medium) – Where the end user has identified a program error but processing can continue, or an individual function is not performing properly; target initial response time is 4 hours. Priority 4 (Low) – For service or information requests, target initial response time is 8 hours. Delstree will allocate a consultant to any reported error in the Delstree Software. Such consultant shall be responsible for contacting the end user, and diagnosing and resolving the error. The end user shall be responsible for implementing any error corrections provided by Delstree. All above target response times are times within Delstree's UK normal working hours. Problems arising in test or development systems will be allocated a priority level that is one less than a similar problem occurring in a productive system. If any part of such Maintenance as is referred to in clause 11 is required or carried out outside Normal Working Hours, Delstree may make additional charges therefor at its then current rate.

11.1.2 – Delstree’s support desk operates during Delstree’s normal working hours, which are between 09:00 and 17:30 GMT, Mondays through Fridays, except on UK bank holidays.

11.1.3 – Delstree will notify the end user of planned update release dates and will provide to the end user all applicable new functionality releases and correction releases on request.

11.2 – During the continuance of the Maintenance, the Customer shall:

11.2.1 – Ensure that environmental and electrical supply conditions suitable for the Equipment are maintained in accordance with the recommendations set out by the manufacturer, and will keep the Equipment clean, and in good condition.

11.2.2 – Ensure that only properly trained persons use the Software and that such persons at all times follow Delstree recommendations and requirements from time to time regarding the use of the same and the provision of security and backup copies.

11.2.4 – Nominate a system supervisor who will handle all communications between the Customer and Delstree regarding the use of the Software and the provisions of the Maintenance.

11.2.5 – Promptly notify Delstree if any part of the Software is not operating properly.

11.2.6 – Make available to Delstree free of charge all facilities and services reasonably required by Delstree to enable Delstree to perform the Maintenance.

11.2.7 – Make available to Delstree such programs, operating manuals and information as may be necessary to enable Delstree to perform its obligations.

11.2.8 – Provide at its own expense such telecommunication facilities as are reasonably required by Delstree for testing and diagnostic purposes.

11.2.9 – Keep full security copies of the Customer’s programs, databases and computer records in accordance with best computing practice.

11.2.10 – Provide all information and facilities reasonably required by Delstree to enable Delstree to diagnose errors in the Software.

11.2.11 – Use the latest correction level of the latest or immediately preceding development release of the Software.

11.2.12 – Provide upon request by Delstree, the applicable licence number(s) for the Software.

11.2.13 – Use the Software (and the Equipment upon which the same is run) in a proper and careful manner and upon such media only as Delstree may from time to time approve in connection with such Software.

11.3 – The Maintenance fee is payable periodically as set out in this Contract and shall be calculated as a percentage of the Licence Fees as follows:

(a) – until the end of the Initial Maintenance Period, the relevant fee shall be as stated in this Contract; and

(b) – for each year following the expiry of the Initial Maintenance Period, the relevant fee shall be that which is stated in Delstree’s then current list price for Maintenance.

11.4 – Delstree shall be entitled to increase the Maintenance Charge for any year of the continuance of the Maintenance beginning with an anniversary of the Commencement Date by giving the customer written notice of the increase (“Notice of Increase”) prior to such anniversary. Such increase shall not be greater (in percentage terms) than twice the percentage increase in the Retail Prices Index published by the Central Statistical Office during the period since the previous increase (or, where there has been no previous increase, the Commencement Date).

11.5 – Where during the continuance of the Maintenance the Customer obtains from Delstree additional Software, Delstree shall inform the Customer of the additional charges payable for incorporating such additional items within the Maintenance provision for the remainder of the year up to the next renewal date. Upon payment of such charges such additional item shall become the subject of the Maintenance Service.

11.6 – Delstree does not support hardware, networks, routers, and system backups, Microsoft Windows, MySQL, third party products, Sage or Xero. It is in the client’s own interest to seek and secure alternative cover for these areas.

11.7- Delstree does not accept responsibility for any third-party software or hardware on the same network as the Delstree system installed by the Customer.

11.8 – Where the Customer requires to upgrade new versions of any installed software or hardware, the Customer must obtain the written permission of a Delstree Manager before doing so.

12 – GENERAL

12.1 – Delstree may subcontract all or any of its obligations under this Contract. All applicable terms of this Contract shall apply notwithstanding that any Services (or any part thereof) shall be carried out by sub-contractors. The Customer may not assign this Contract (in whole or in part) without the prior written consent of Delstree.

12.2 – The terms and conditions of this Contract shall prevail notwithstanding any variance with the terms of any order or contract submitted by the Customer in respect of the Software and/or the Services. No variations to the terms of this Contract shall be binding upon either party unless the same shall have been confirmed in writing by a director of that party

12.3 – Neither party shall for a period of 12 months following the installation of the System recruit retain employ or seek to employ any person who is employed or retained by the other party and who is materially involved in any part of the supply of the System. If either party is in breach of this obligation that party shall pay to the other party an amount equal to 35% of annual salary of the employee at the time of the breach.

12.4 – All notices or other documents to be given under this Contract shall be in writing and either delivered by hand or sent by registered post or email to the party concerned at the address set out in this Contract or such other address as one party may from time to time designate by written notice to the other. Any such notice shall be deemed to have been received by the addressee if delivered by hand, upon delivery; if posted, on the 2nd working day following the date of posting; and if sent by email, when the communication is transmitted to the recipient’s

email address PROVIDED THAT a copy of the communication is sent by registered post or delivered by hand as soon as practicable thereafter.

12.5 – This Contract shall be governed exclusively by English Law. The parties agree to submit all matters in dispute under or in connection with this Contract to the exclusive jurisdiction of the English courts.

12.6 – Each provision of this Contract shall be construed separately and notwithstanding that the whole or any part of any such provision may prove to be illegal or unenforceable the other provisions of this Contract and the remainder of the provision in question shall continue in full force and effect.

12.7 – The waiver by either party of a breach or default of any term of this Contract by the other party must be in writing and shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall a delay or omission on the part of either party to exercise or avail itself of any right or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

13 – TERMINATION

13.1 – Delstree may forthwith by written notice to the Customer terminate this Contract if the Customer fails to make any payment due to Delstree under this or any other agreement (whose subject matter relates or is connected specifically to the Software or the Services) by its due date.

13.2 – Either party may terminate this Contract forthwith by written notice to the other if the other shall commit a material breach of this Contract and shall (in the case of a remediable breach) fail to remedy the same within a reasonable period of receipt of a written notice from the other party specifying the breach and requiring it to be remedied.

13.3 – Either party may terminate this Contract forthwith by written notice to the other if the other party shall have a receiver or administrative receiver appointed or shall have a bankruptcy order made against it or one of its partners or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall become unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or shall cease or threaten to cease to carry on business or shall suffer any similar or analogous event in any jurisdiction.

13.4 – Termination for any reason shall not affect either party's rights and remedies accruing up to termination.

13.5 – If this Contract is terminated, the Customer shall immediately cease using the Licensed Materials and return to Delstree or destroy (as requested by Delstree) the originals and all copies of the same. Upon Delstree's request to destroy such materials the Customer shall certify in writing that it has done so.

13.6 – The Customer may terminate this contract following a period of 12 months from the installation date of the System, providing 1 months' notice in writing of termination. In the event that the installation did not take place then the Customer contract sign date.

14 – ARBITRATION

Delstree reserves the right, without prejudice to any other remedies Delstree may have, to refer any dispute between Delstree and the Customer arising in any way in connection with the Contract or the rights and duties of the parties to an individual acting as expert and not as arbitrator who shall decide the dispute in hand to be agreed between the parties hereto or in default of agreement to be appointed on the application of either party by the Chief Executive Officer for the time being of the National Computing Centre. The decision of any expert appointed hereunder shall, save in the case of manifest error, be final and binding on the parties. The charges of the expert shall be borne as the expert, in its absolute discretion, determines.

15 – ENTIRE AGREEMENT

This Contract sets out the entire agreement between the parties and supersedes all prior agreements, understandings and arrangements between them, and representations by them, whether oral or written, which relate to the subject matter of this Contract PROVIDED THAT this clause shall not exclude or limit liability for fraud.

16 – GDPR

For further details regarding our policies, please refer to our Privacy Policy
https://www.delstree.com/images/document/13376204/Delstree_Privacy_Policy.pdf