

IMPORTANT : You must read and accept the following terms and conditions before loading, installing, or in any other way using any or all of the items on this media. This document can printed out from the media.

By default the items on this media are being supplied by Trinity Computers Services Ltd ("Trinity") for evaluation purposes only and such supply is subject to the terms and conditions set out below under the heading "Supply of Trinity Material for Evaluation".

However, where Trinity is supplying the items on this media as the result of accepting a Quotation from and signed by the Customer, such supply is subject to the terms and conditions set out below under the heading "Supply, License and Support of Trinity Material"; the definition for each of Quotation and Customer being in these terms and conditions.

Supply, License and Support of Trinity Material

1. Definitions

In these terms and conditions the following words and phrases shall have the following meanings :

- 1.1 "**Customer**" means the person, firm or company referred to as such in the Quotation and "**Customer's Premises**" means the premises referred to as such in the Quotation;
- 1.2 "**Documentation**" means the notes and/or user manuals describing the functions and operation of the Trinity Software in so far as Trinity has agreed to provide such notes and user manuals;
- 1.3 "**End-User**" means the Customer's customer to whom the Customer grants a sub-licence for the Use of the Trinity Material subject to prior agreement from Trinity in accordance with these terms and conditions.
- 1.4 "**Incident**" means a problem or query in respect of a Supported Item reported to Trinity by the Customer in accordance with the procedures set out in clause 15; and "**Incident Reference**" means the reference code given by Trinity to the Customer for an Incident;
- 1.5 "**Licence**" means the licence granted to the Customer pursuant to clause 5 hereof;
- 1.6 "**Order Items**" means any or all of the Trinity Software and/or Services and/or Support Services listed in the Quotation for supply by Trinity to the Customer;
- 1.7 "**Price**" means the price payable by the Customer for any and all of the Order Items;
- 1.8 "**Quotation**" means the numbered and dated quotation form sent by Trinity to the Customer, accepted and signed by the Customer and returned to Trinity, offering Order Items in consideration of the Price. For Order Items, the Price and payment terms are set out in the Quotation. For Trinity Material, the End-User's name and address and the hardware and/or operating software and/or number of user sessions to which the licence applies are set out in the Quotation. For Support Services, the Support Schedule accompanies and forms part of the Quotation;
- 1.9 "**Services**" means any and all of the services, or any instalment or part of the same, listed in the Quotation;
- 1.10 "**Software Delivery Note**" means written confirmation by Trinity that the Trinity Software, or any instalment or part of the same, has been delivered; the "**Software Delivery Date**" means the date of the Software Delivery Note;
- 1.11 "**Support Schedule**" means the schedule setting out : (i) the items for which Trinity provides the Support Services; (ii) the commencement date of the Support Services ("**Support Start Date**"); and (iii) terms (additional to these terms and conditions) on which Trinity provides the Support Services;
- 1.12 "**Support Services**" means the support services provided by Trinity and described in the Support Schedule;
- 1.13 "**Supported Item**" means any and all items in the Support Schedule for which Trinity provides the Support Services;
- 1.14 "**Trinity**" means Trinity Computer Services Ltd of Trinity House, Bredbury Park Way, Stockport, Cheshire SK6 2SN;
- 1.15 "**Trinity Software**" means the computer software, or any instalment or part of the same, listed in the Quotation and supplied to the Customer under licence from Trinity; and "**Trinity Material**" means Trinity Software and the Documentation relating thereto;
- 1.16 "**Use**" means (a) in the case of an End-User to load and run the Trinity Software and use the Documentation relating thereto in conjunction therewith all in accordance with these terms and conditions; and (b) in the case of a Customer the right to grant a sub-licence to the End-User to Use the Trinity Software and Documentation in accordance with clause 1.16 (a) above.

2. Price and Payment

- 2.1 Unless otherwise stated in the Quotation the Customer shall pay the Price to Trinity within 30 days of receipt of a valid invoice.
- 2.2 The Price is exclusive of : (a) statutory or government taxes which will be charged by Trinity at the prevailing rate; (b) reasonable travel, accommodation and subsistence expenses incurred by Trinity which will be passed on to the Customer at cost; (c) carriage packing and insurance which will be passed to the Customer at cost.

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- 2.3 If Order Items are delivered in instalments Trinity shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments.
- 2.4 If the Price is payable in instalments or if the Customer has agreed to take specified quantities of Order Items at specified times a default by the Customer in the payment of any instalment due or the failure to give delivery instructions in respect of any of the Order Items outstanding shall cause the whole of the balance of the Price to become due and payable forthwith.
- 2.5 Where, due to the fault of the Customer, any Order Items have not been delivered within 6 months of the date of receipt by Trinity of the Customer's acceptance of the order detailed in the Quotation, Trinity reserves the right to vary the prices of such undelivered items in line with the prevailing list prices of Trinity.
- 2.6 Trinity shall supply Order Items to the Customer's Premises. Where the Customer changes the location for the said supply Trinity reserves the right to vary the Price and times dates or periods already notified for the said supply.
- 2.7 The Price shall be due in full to Trinity in accordance with these terms and conditions and the Customer shall not be entitled to exercise any set-off, lien or any other similar right or claim.
- 2.8 Without prejudice to Trinity's rights under these terms and conditions, in the event that any payment is overdue, Trinity may cease supply of Order Items until such time as payment is received.
- 2.9 If any sum payable under these terms and conditions is not paid by the Customer in accordance with clause 2.1 above then (without prejudice to Trinity's other rights and remedies) Trinity reserves the right to charge interest at 4% above the Current Base Rate of the National Westminster Bank PLC on overdue payments of the Price or any instalments thereof.

3. Warranty

- 3.1 Trinity warrants that all date-related functions of the Trinity Software will accurately reflect the change from the year 1999 to the year 2000 and beyond, including leap-year calculations, provided that any hardware and/or software used with the Trinity Software (i) accurately reflects the said change and (ii) does not prevent the Trinity Software from accurately reflecting the said change.
- 3.2 All warranties in these terms and conditions in respect of Trinity Software are conditional on the Customer maintaining in force a maintenance agreement relating thereto to the reasonable satisfaction of Trinity and in accordance with the provisions of clause 4.
- 3.3 Trinity does not warrant that any Trinity Software supplied under these terms and conditions will operate uninterrupted or error free.
- 3.4 Where Trinity licenses Trinity Material to the Customer Trinity warrants :
- the Documentation will provide instructions to enable the Customer to make proper use of the Trinity Software in so far as Trinity agrees to supply Documentation to the Customer in respect of the same.
 - the Trinity Software will be free from material defects and will conform substantially with the Documentation for a period of 3 months after the Software Delivery Date provided that the Trinity Software has been used in accordance with the Documentation and has not been modified in an unauthorised manner.
 - during such 3 month period Trinity shall use its reasonable endeavours to correct any failure of the Trinity Software to conform substantially with the Documentation provided that the Customer promptly reports any such failure to Trinity and provides Trinity with written details sufficient to enable Trinity to reproduce the said failure.

Trinity does not warrant that the functions of the Trinity Software will operate in combinations selected by the Customer without specific written guidance from Trinity.

- 3.5 Where Trinity provides Services :
- Trinity warrants that the Services will be provided with all due care and skill. In substitution for all rights which the Customer would or might have but for these terms and conditions Trinity undertakes in the case of Services supplied by Trinity that if within one month of the provision of the Services a material defect in materials or workmanship occurs as a result of such provision Trinity will re-perform the Services free of charge at the place of performance of the original Services.
 - In order to exercise its rights under clause 3.5 (a) the Customer shall inform Trinity within seven days of the date when such defect appeared or ought reasonably to have been discoverable and shall provide Trinity with full written details thereof.

Nothing herein shall impose any liability upon Trinity in respect of any defect in the Services arising out of the acts, omissions, negligence or default of the Customer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Customer to comply with any recommendations of Trinity or the manufacturer or supplier of any computer equipment or software as to the installation or use of such computer equipment or software.

- 3.6 Where Trinity provides Support Services, Trinity warrants to the Customer that the Support Services will be provided with all due care and skill. Trinity does not warrant or undertake to have available Trinity staff with specialised knowledge required to progress any particular Incident, although should such staff be required Trinity will endeavour to make such staff available as soon as practicable.
- 3.7 Trinity's liability under the warranty in clause 3.1 shall be limited to the provision of corrections or updates and such provision shall be the Customer's sole remedy for breach of the said warranty. If Trinity shall fail to comply with such obligations its liability for failure shall be subject to the provisions of clause 8. Trinity shall not be liable under the warranty in clause 3.1 if the effectiveness of the corrections or updates is reduced or extinguished as a result of the Customer not having taken out and maintained in force maintenance services available to the Customer.
- 3.8 The remedies set out in these terms and conditions shall be the exclusive remedies of the Customer in respect of any breach of the warranties set out herein.

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4. Maintenance

4.1 In respect of Trinity Software supplied under these terms and conditions the Customer undertakes to enter into a maintenance agreement for a period of 12 months on the current standard terms and conditions of Trinity, the 12 month period to start within 7 days of the relevant Software Delivery Date.

5. Licence.

5.1 In relation to Trinity Software :

- (a) the performance by Trinity of its obligations under these terms and conditions is in all respects conditional on the Customer entering into a licence agreement with Trinity (a "Licence") governing the use by the Customer and the rights to grant sub-licences of the Trinity Software to End-Users in such form as may be required by Trinity;
- (b) the Customer undertakes to be bound and abide by the terms and conditions of any Licence. The terms of the Licence in respect of Trinity Material are set out in Annex 1 to these terms and conditions.

6. Right of Enjoyment

- 6.1 Trinity warrants that it has the right to sell or license as the case may be Order Items. Should any dispute arise where a third party claims rights over any item, the Customer shall immediately inform Trinity in writing of any dispute of which it has notice and will not make any admissions without Trinity's prior written consent.
- 6.2 The Customer, at Trinity's request and expense, shall allow Trinity to conduct and or settle all negotiations and litigation arising from any such dispute and shall at the request of Trinity afford all reasonable assistance with such negotiations or litigation.
- 6.3 The agreement by Trinity to take over the conduct and settlement of the negotiation and litigation arising out of the use of the Order Items will not apply to any dispute arising out of the use of the Order Items or any part thereof in combination with any hardware or software not supplied or approved by Trinity for use with the Order Items.
- 6.4 If the Customer's normal use or possession of the Order Items is held by a court of competent jurisdiction to constitute an infringement of a third party's intellectual property rights or Trinity is advised by legal counsel that such use or possession is likely to constitute such an infringement then Trinity shall promptly at its own expense either : (a) procure for the Customer the right to continue using and possessing the Order Items; or (b) modify or replace the Order Items so as to avoid infringement; or (c) if (a) or (b) cannot be achieved on reasonable terms remove Order Items (or that part thereof the subject of the dispute) and refund to the Customer the Price relating thereto and if the said removal materially and adversely affects the working and usefulness of the remaining Order Items remove these Order Items and refund to the Customer the Price relating thereto.
- 6.5 The foregoing states the entire liability of Trinity in respect of disputes by a third party claiming rights over an item of the Order Items.

7. Risk and Confidentiality

- 7.1 Risk in Order Items shall pass to the Customer on delivery of Order Items to the Customer's Premises and the Customer shall be responsible for insuring Order Items against all normal risks with effect from the time risk passes.
- 7.2 Each party undertakes to the other that it will keep confidential all information communicated to it by the other and will not without prior written consent of the other disclose the same to any other person provided always that such undertaking shall not extend to any information which (a) is already in that party's possession at the date of communication to Trinity of the acceptance by the Customer of Trinity's offer to supply the Order Items; or (b) is now or becomes public knowledge (otherwise than by reason of any breach of such undertaking by that party); or (c) is received by that party from any other person in good faith and without restriction. This undertaking shall survive any notice of termination given by either party.

8. Liability

- 8.1 Nothing herein shall have the effect of excluding or restricting the liability of Trinity for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.
- 8.2 The aggregate liability of Trinity for direct loss of or damage to the tangible material property of the Customer shall be limited to a maximum amount of £1,000,000 (One Million Pounds Sterling) in aggregate whether arising in contract, tort (including negligence) or otherwise.
- 8.3 Trinity's total aggregate liability for loss or damage (other than that governed by clauses 8.1 and 8.2) shall in no event exceed the Price.
- 8.4 Trinity shall not be liable in any way for losses caused by the Customer's failure to perform its obligations under these terms and conditions including (without limitation) any failure of the Customer to make adequate provisions for recovery of lost or corrupted data.
- 8.5 The parties expressly agree that should any limitation or provision contained in this clause 8 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provision set out herein.
- 8.6 Without prejudice to clause 8.1, in no event shall Trinity be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever for: (a) any increased costs or expenses; (b) any loss of profit, business, goodwill, contracts, revenues or anticipated savings; (c) loss of, damage to or corruption of data; or (d) any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof arising out of or in connection with the supply or provision of the Order Items.

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- 8.7 The Customer shall indemnify and defend Trinity and its employees and representatives in respect of any claims by third parties which are occasioned by or arise from any of Trinity's acts or omissions pursuant to the instructions of the Customer or its authorised representatives.
- 8.8 These express terms and conditions are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise all of which are excluded to the fullest extent permitted by law.

9. Termination

- 9.1 Either Trinity or the Customer (the "**notifying party**") in its discretion and without prejudice to any other right or claim may by notice in writing terminate any contract for the delivery or provision of Order Items if :
- (a) the other party is in serious breach of any of its obligations under these terms and conditions and where capable of remedy does not remedy such breach within 30 days after written notice has been given to it by the notifying party (specifically referring to this clause 9.1(a)) specifying such breach and requiring such remedy; or
 - (b) any distress or execution shall be levied on the other party's property or assets or (if the other party is a company) if any resolution or petition to wind up such company shall be passed or presented (otherwise than for the purpose of amalgamation or reconstruction) or if a receiver, administrative receiver, administrator or liquidator of the whole or any part of such company's undertaking property or assets shall be appointed or a court shall make an order to that effect (or if the other party is a partnership or individual) if such partnership is dissolved or if such individual shall die or if such partnership or individual shall make or offer to make any arrangement or composition with its creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against it or him.

10. Assignment

- 10.1 Neither party shall assign, transfer, novate, charge, part with possession or otherwise dispose of any of its rights or obligations hereunder without the prior written consent of the other such consent not to be unreasonably withheld or delayed.

11. Miscellaneous

- 11.1 The Customer agrees to use all reasonable endeavours to assist Trinity in fulfilling its obligations under these terms and conditions.
- 11.2 Order Items supplied in accordance with these terms and conditions may not be returned without Trinity's prior written authorisation. Duly authorised returns shall be sent to Trinity at the Customer's expense.
- 11.3 Time will not be of the essence in respect of the performance of obligations under these terms and conditions.
- 11.4 Any notice document or request to be given or served hereunder may be given or served by sending it by hand, by facsimile transmission or by special delivery post to the address of Trinity or the Customer as referred to in the Quotation. Any notice document or request sent shall be deemed to have been given : (a) in the case of delivery by hand when delivered; (b) in the case of facsimile transmission, one working day after the transmission date (provided that the facsimile transmission was properly addressed and transmitted and the sender's facsimile machine generates a transmission report confirming the same); and (c) in the case of special delivery post, 3 working days after the date of posting.
- 11.5 Each party shall notify the other if their address changes.
- 11.6 Neither Trinity nor the Customer shall incur any liability to the other in the event that they (the "**delaying party**") are delayed in the performance of their obligations hereunder solely by force majeure (subject to the delaying party notifying the other promptly of the reasons for the delay and the likely duration thereof) and the time for performance of the delaying party's obligations shall in such event be extended by a period equal to the period during which the circumstances of force majeure persist (subject to the delaying party notifying the other of the reasons for the delay and of the likely duration of the delay and to the delaying party requesting an extension of time).
- 11.7 For the purpose of these conditions (but not by way of limitation) force majeure shall mean in the case of both Trinity and the Customer: (a) any cause of delay beyond the reasonable control of the party liable to perform unless conclusive evidence to the contrary is provided and shall include strikes, lockouts, riots, sabotage, act of war, piracy, destruction of essential equipment by fire, explosion, storm, flood or earthquake or delay caused by failure of power supplies or transport facilities; and (b) any delay caused by the death or incapacity by reason of ill health or termination of employment or engagement of any person employed or engaged to perform the obligations hereunder who cannot be quickly replaced because of relevant special knowledge.
- 11.8 Notwithstanding that the whole or any part of any provision of these terms and conditions may prove to be illegal or unenforceable the other provisions of the terms and conditions and the remainder of the provision in question shall remain in full force and effect.
- 11.9 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of Trinity's agents or employees shall be construed to enlarge, vary or override in any way any of these terms and conditions. This Agreement constitutes the entire agreement of Trinity and the Customer on the subject matter hereof and supersedes all previous agreements and representations written or oral with respect to its subject matter.
- 11.10 These terms and conditions shall apply to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Customer to Trinity and the provisions of these terms and conditions shall prevail unless expressly varied in writing by a director on behalf of Trinity.
- 11.11 No forbearance delay or indulgence by Trinity or the Customer in enforcing the provisions of these terms and conditions shall prejudice or restrict their rights nor shall any waiver of their respective rights operate as a waiver of any subsequent breach and no right power or remedy herein conferred or reserved for Trinity or the Customer is exclusive of any other right power or remedy available and each such right power or remedy shall be cumulative.

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- 11.12 These terms and conditions and all the provisions hereof and all questions of construction validity and performance hereunder shall be governed by English law and the English courts shall have jurisdiction in any dispute or difference or any other matter or thing arising under or by reason of these conditions.
- 11.13 The headings of clauses in these terms and conditions are included herein for convenience and shall not affect the interpretation or construction of these terms and conditions.

SUPPLY OF TRINITY MATERIAL**12. Supply of Trinity Material**

- 12.1 The terms and conditions in this clause 12 are specific to the supply of Trinity Material and in addition to those in clauses 1 to 11.
- 12.2 Trinity shall : (a) grant to the Customer a non-exclusive Licence to Use the Trinity Material; and (b) deliver one copy of the Trinity Material to the Customer.
- 12.3 The Customer shall promptly notify Trinity of any material non-compliance of the Trinity Software with the Documentation, such non-compliance being recognised as such only if the Customer promptly provides written details sufficient to enable Trinity to reproduce the non-compliance. Trinity will correct the non-compliance, and will redeliver the Trinity Software.

SUPPLY OF SUPPORT SERVICES**13. Context**

- 13.1 The terms and conditions and conditions in clauses 14 to 17 are specific to the supply of Support Services and in addition to those in clauses 1 to 11.

14. Payment and Changes in the Price

- 14.1 The Price in respect of the Support Services shall be paid by the Customer in advance.
- 14.2 Without prejudice to clauses 14.3 and 14.4, Trinity may by not less than 2 months prior written notice increase the Price for the Support Services once between each anniversary of the Support Start Date.
- 14.3 With the prior written consent of Trinity and in consideration of an increase in the Price for the Support Services (payable in advance by the Customer), the Customer may include additional items in the Support Schedule whereupon such items shall thereafter become Supported Items.
- 14.4 If the Customer is granted a licence extension for the permitted number of user sessions in respect of a Supported Item, the Price for the Support Services shall increase by the amount set out in the Quotation for such licence extension. The Customer shall pay Trinity such increase upon receiving the invoice.
- 14.5 By not less than 3 month's prior written notice to Trinity, the Customer may remove a Supported Item from the Support Schedule. Following the expiry of such notice Trinity shall repay that part of the Price paid for the said Supported Item in respect of the period following the expiry of such notice.

15. Customer's Obligations

- 15.1 When reporting a failure of the Trinity Software to conform with the Documentation, the Customer shall provide written details sufficient to enable Trinity to reproduce the said failure and Trinity reserves the right not to progress the report until such details are provided.
- 15.2 Where Trinity provides Support Services to the Customer : (i) Incidents shall be reported to the Trinity helpdesk via the telephone or fax lines or by e-mail to the e-mail address, in each case provided to the Customer for that purpose; (ii) The Customer shall quote the Incident Reference in all communications with Trinity in respect of an Incident; (iii) The Customer will co-operate with Trinity in the investigation of an Incident (including the running of diagnostic software and tests under the guidance of Trinity and promptly and accurately reporting the results).

16. Limits and Exclusions

- 16.1 The Support Services do not include : (i) the provision of training, installation, project management, systems analysis, programming, technical services, consultancy services unless required as part of the provision of the Support Services; (ii) unless otherwise agreed in writing by Trinity, upgrades to Trinity Material.
- 16.2 The Support Services do not include services in respect of and Trinity shall not be liable for the general performance and speed of response of any hardware or network or software working in conjunction with the Trinity Software.
- 16.3 Trinity reserves the right not to provide all or part of the Support Services for situations caused by or relating to :
- (a) Any failure of the Customer to meet the obligations described in clause 15.
 - (b) Any part of the Trinity Software, or any part of the hardware and/or network and/or software working in conjunction with the Trinity Software, having been damaged (i) by any accident or disaster such as fire, flood, water, lightning, vandalism, or burglary; or (ii) by negligence or misuse other than by Trinity.
 - (c) The performance or the functionality of the Trinity Software being impaired as a result of a defect in or failure of or change or repair to any part of the hardware and/or network and/or software working in conjunction with the Trinity Software.

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- (d) Any part of the Trinity Software (i) having been modified other than by Trinity, or (ii) not being the latest version delivered by Trinity, or (iii) not having been used in accordance with its Documentation.
- (e) Any defect or failure which Trinity reasonably deems (i) to have occurred during any period of suspension of the Support Services under clause 17 or (ii) a result of such suspension.

17. Suspension and Termination of Support Services

- 17.1 If the Price for the Support Services or any part thereof is not paid in accordance with these terms and conditions then Trinity, without prejudice to its rights in respect of the Price or to its rights in respect of the said money owed or to its right to receive proper notice of termination, reserves the right to suspend provision of the Support Services forthwith. Without prejudice to clause 16.3 (e), Trinity shall resume the said provision on remedy of the default by the Customer.
- 17.2 If the Customer has not paid the Price to Trinity for a Supported Item (other than as allowed by payment terms agreed in writing between Trinity and the Customer) then Trinity, without prejudice to its rights in respect of the Price or to its rights in respect of the said money owed or to its right to receive proper notice of termination, reserves the right to suspend forthwith provision of the Support Services for that Supported Item and for Incidents materially related to that Supported Item irrespective of whether those Incidents involve other Supported Items for which Support Services are being provided. Without prejudice to clause 16.3 (e), Trinity shall resume the said provision on remedy of the default by the Customer.
- 17.3 Subject to any agreed minimum term either party may by not less than 3 months prior written notice to the other terminate the Support Services.

ANNEX 1**Licence Terms for Trinity Material****1. Preface**

- 1.1 Words and phrases defined in clause 1 of Trinity's Terms and Conditions for the Supply, License and Support of Trinity Material shall, unless the context otherwise requires, have the same meaning in this Annex 1.

2. Licences

- 2.1 Trinity hereby grants to the Customer a non-exclusive licence to Use the Trinity Material subject to the terms hereinafter contained.
- 2.2 Trinity Material is licensed on a non-exclusive basis for use, in the case of Trinity Software, in machine-readable form in conjunction with the software set out in the Quotation. No title or ownership of Trinity Material or any part thereof is transferred or shall pass to or vest in the Customer or End-User.
- 2.3 Each time the Trinity Software is initiated (whether or not on the same or different terminals) a user session shall be deemed to have commenced. The maximum number of concurrent user sessions for which the Customer is licensed is set out in the Quotation.
- 2.4 All Trinity Material is subject of copyright and neither the Customer nor the End-User may without prior written consent of Trinity make any copies or derivatives except in the case of the End-User for archive purposes, to replace a defective copy, or for program error verification.
- 2.5 The Customer shall procure that the End-User shall Use the Trinity Material for processing its own data solely for its own internal business purposes. The Customer shall not permit any End-User to use the Trinity Material on behalf of or for the benefit of any third party in any way whatever (including, without limitation, using the Trinity Material for the purpose of operating a bureau service).
- 2.6 The Licence shall continue until terminated in accordance with paragraph 2.18 of this Annex or as otherwise provided in Trinity's Terms and Conditions for the Supply, License and Support of Trinity Material.
- 2.7 The Customer undertakes and shall procure that End-Users undertake to treat as confidential and keep secret all information contained or embodied in the Trinity Material and all information conveyed to the Customer by training (hereinafter collectively referred to as "**the Information**").
- 2.8 The Customer shall not and shall procure that End-Users shall not without the prior written consent of Trinity divulge any part of the Information to any person except : (a) the Customer's or the End-User's own employees and then only to those employees who need to know the same; (b) persons or bodies having a right duty or obligation to know the business of the Customer or the End-User and then only in pursuance of such right duty or obligation; (c) any person who is from time to time appointed by the End-User to maintain any equipment on which the Trinity Software is being used (in accordance with the terms of the Licence) and then only to the extent necessary to enable such person properly to maintain such equipment.
- 2.9 The Customer undertakes to ensure and shall procure that End-User ensure that the persons and bodies mentioned in paragraph 2.8 of this Annex are made aware prior to the disclosure of any part of the Information that the same is confidential. The Customer shall indemnify Trinity against any loss or damage which Trinity may sustain or incur as a result of such persons or bodies failing to comply with such duty.

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- 2.10 The Customer shall promptly notify Trinity, and shall procure that the End-User shall promptly notify the Customer, if they become aware of any breach of confidence by any person to whom the Customer or the End-User divulges all or any part of the Information and shall give Trinity all reasonable assistance in connection with any proceedings which Trinity may institute against such person for breach of confidence.
- 2.11 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Licence.
- 2.12 The Customer shall and shall procure that the End-User shall during the continuance of this Licence: (a) effect and maintain adequate security measures to safeguard the Trinity Material from access or use by any unauthorised person; (b) retain the Trinity Material and all copies thereof under the Customer's or End-User's (as the case may be) effective control; (c) maintain a full and accurate record of the Customer's or End-User's (as the case may be) copying and disclosure of the Trinity Material.
- 2.13 Except to the extent and in the circumstances expressly required to be permitted by Trinity by law, neither the Customer nor End-User shall alter, modify, adapt or translate the whole or any part of the Trinity Material in any way whatever nor permit the whole or any part of the Trinity 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.
- 2.14 To the extent that English law grants the End-User the right to decompile the Trinity Software in order to obtain information necessary to render the Trinity Software interoperable with other computer programs used by the End-User, Trinity hereby undertakes to make that information readily available to the Customer for supply to the End-User. Trinity shall have the right to impose reasonable conditions such as a reasonable fee for doing so. In order to ensure that the End-User receives the appropriate information, the Customer must first give Trinity sufficient details of the End-User's objectives and the other software concerned. Requests for the appropriate information should be given by notice to Trinity in accordance with this Licence.
- 2.15 The End-User may combine, at its own expense and responsibility, the Trinity Software with other programs to form a combined work. Any Trinity Software included in the combined work shall continue to be subject to the terms contained herein. Where such other programs are the property of a third party the End-User shall be responsible for obtaining all necessary consents to their use with the Trinity Software. The Customer shall indemnify Trinity against any claim that the use of the Trinity Software in combination with such other programs infringes the intellectual property rights of any third party. Upon termination of this Licence the Customer shall procure that the End-User shall completely remove the Trinity Software from such combined work before returning or destroying the same in accordance with paragraph 2.19 of this Annex.
- 2.16 Trinity shall not be responsible for any error in the Trinity Material or failure of the Trinity Software to fulfil the Documentation in so far as such error or failure occurs in or is caused by any part of the Trinity Software modified or combined by the End-User as aforesaid.
- 2.17 The Customer may terminate this Licence at any time by giving at least 30 days' prior written notice to Trinity.
- 2.18 Trinity may terminate the Licence forthwith on giving notice in writing to the Customer if :
- (a) the Customer commits any material breach of any of its obligations under Trinity's terms of business or this Licence or the End-User commits any material breach of its obligations under its sub-licence from the Customer and (in each case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from Trinity or the Customer (whichever is applicable) so to do, to remedy the breach such request to contain a warning of Trinity's or the Customer's (whichever is applicable) intention to terminate;
 - (b) the Customer or the End-User shall have a receiver, administrative receiver or an administrator appointed of it or over any part of its undertaking or assets 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 Customer or the End-User shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order or shall cease to carry on business.
- 2.19 Forthwith upon the termination of this Licence the Customer shall return to Trinity the Trinity Material including any modifications thereof made by the End-User and all copies of the whole or any part thereof or, if requested by Trinity, shall destroy the same (in the case of the Trinity Software by erasing them from the magnetic media on which they are stored) and certify in writing to Trinity that they have been destroyed. The Customer shall also procure that the End-User causes the Trinity Material to be erased from any hardware or equipment and shall certify to Trinity that the same has been done.
- 2.20 Any termination of this Licence (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

Support Schedule

1. Preface

1.1 Words and phrases defined in clause 1 of Trinity's *Terms & Conditions for Partners : Supply, License and Support of Trinity Material* ("Trinity's T&Cs") shall, unless the context otherwise requires, have the same meaning in this Support Schedule.

1.2 The terms and conditions in this Support Schedule are in addition to Trinity's T&Cs and are only applicable where Trinity has agreed to provide Support Services. Should there be any conflict between this Support Schedule and Trinity's T&Cs, Trinity's T&Cs shall prevail.

1.3 In this Support Schedule :

- (a) "**Table**" means the table which is attached to and is part of this Support Schedule and in which is set out the Supported Items (which may be amended in accordance with clause 14 of Trinity's T&Cs) and the Support Start Date;
- (b) "**Working Day**" means, excluding national or public holidays, between the hours of 09.00 to 17.30 on Mondays to Thursdays and 09.00 to 17.00 on Fridays; and "**Working Day Extension**" means the half-hour period immediately before the beginning of the Working Day and/or the half-hour period immediately after the end of the Working Day. The Working Day Extension does not apply to the Working Day last before a national or public holiday.

2. Support Services

2.1 The Support Services are provided by one or more of (i) telephone, (ii) computer media, (iii) Trinity gaining electronic access to the Supported Items by letter, fax, or other written communication. Unless agreed by Trinity for a specific Incident the Support Services do not include attendance at the Customer's Premises or the End-User's premises.

2.2 Trinity will give the Customer an Incident Reference for each Incident reported by the Customer.

2.3 In respect of Supported Items Trinity shall use its reasonable endeavours to :

- (a) during the Working Day and the Working Day Extension provide advice, but not training, on general day to day procedural problems or queries;
- (b) during the Working Day investigate any material non-compliance with the Documentation and, where appropriate, correct such non-compliance.

2.4 Where Trinity agrees, and such agreement will not be unreasonably withheld or delayed, that the effect of an Incident is to prevent the End-User from carrying out critical business processes Trinity shall, if the Customer so requires, use its reasonable endeavours to continue to provide Support Services outside of the periods set out in clause 2.3 subject to Trinity (i) deciding that such action will make a material difference and (ii) having the staff available with the appropriate skill and knowledge.

3. Table of Supported Items

<u>TABLE OF SUPPORTED ITEMS</u>	
Customer :	Support Start Date :
Supported Items	Supported Items

Supply, License and Support of Trinity Material - End

Supply of Trinity Material for Evaluation

1. Definitions

In these terms and conditions the following words and phrases shall have the following meanings :

- 1.1 "**Licensee**" means the person, and also the company where the said person is acting on behalf of their employer or another company, who accesses downloads or otherwise Uses the Program Material. ;
- 1.2 "**Trinity**" means Trinity Computer Services Ltd of Trinity House, Bredbury Park Way, Stockport, Cheshire SK6 2SN;
- 1.3 "**Trinity Material**" means any and all of the computer software and accompanying documentation supplied under licence from Trinity for the purposes of evaluation only;
- 1.4 "**Use**" means to load and/or run and/or otherwise use the Trinity Material in accordance with these terms and conditions.

2. Supply and Licence

- 2.1 Trinity hereby grants to the Licensee a non-exclusive licence to Use the Trinity Material subject to the terms hereinafter contained.
- 2.2 Trinity Material is licensed on a non-exclusive basis for use, in the case of computer software, in machine-readable form only. No title or ownership of Trinity Material or any part thereof is transferred or shall pass to or vest in the Licensee.
- 2.3 All Trinity Material is subject of copyright and the Licensee may not without prior written consent of Trinity make any copies or derivatives.
- 2.4 The Licensee shall use the Trinity Material for its own internal evaluation purposes only. The Licensee shall not permit any third party to use or have access to the Trinity Material nor use the Trinity Material on behalf of or for the benefit of any third party in any way whatever.
- 2.5 The Licensee expressly acknowledges :
 - (a) that the Trinity Material is not intended for use in an environment of live running;
 - (b) that any data used with or produced by the Trinity Material cannot subsequent to such use or production be relied upon for its accuracy or integrity;
 - (c) that the Trinity Material is supplied without any warranty of any kind other than that Trinity has the right to license the Trinity Material.
- 2.6 Except to the extent and in the circumstances expressly required to be permitted by Trinity by law, the Licensee shall not alter, modify, adapt or translate the whole or any part of the Trinity Material in any way whatever nor permit the whole or any part of the Trinity Material 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.

3. Liability

- 3.1 Nothing herein shall have the effect of excluding or restricting the liability of Trinity for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.
- 3.2 The aggregate liability of Trinity for direct loss of or damage to the tangible material property of the Licensee shall be limited to a maximum amount of £1,000,000 (one million pounds sterling) in aggregate whether arising in contract, tort (including negligence) or otherwise.
- 3.3 Trinity's total aggregate liability for loss or damage (other than that governed by clauses 3.1 and 3.2) shall in no event exceed £1,000.
- 3.4 Trinity shall not be liable in any way for losses caused by the Licensee's failure to perform its obligations under these terms and conditions including (without limitation) any failure of the Licensee to make adequate provisions for recovery of lost or corrupted data files.
- 3.5 The parties expressly agree that should any limitation or provision contained in this clause 3 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provision set out herein.
- 3.6 Without prejudice to clause 3.1, in no event shall Trinity be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever for: (a) any increased costs or expenses; (b) any loss of profit, business, goodwill, contracts, revenues or anticipated savings; (c) loss of, damage to or corruption of data; or (d) any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof arising out of or in connection with the supply or provision of the Trinity Material.
- 3.7 The Licensee shall indemnify and defend Trinity and its employees and representatives in respect of any claims by third parties which are occasioned by or arise from any of Trinity's acts or omissions pursuant to the instructions of the Licensee or its authorised representatives.
- 3.8 These express terms and conditions are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise all of which are excluded to the fullest extent permitted by law.

4. Miscellaneous

- 4.1 Notwithstanding that the whole or any part of any provision of these terms and conditions may prove to be illegal or unenforceable the other provisions of the terms and conditions and the remainder of the provision in question shall remain in full force and effect.

Terms & Conditions for Partners : Supply, License and Support of Trinity Material (Ref : Rev P3.2-2002-02-01)

- 4.2 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of Trinity's agents or employees shall be construed to enlarge, vary or override in any way any of these terms and conditions. This Agreement constitutes the entire agreement of Trinity and the Licensee on the subject matter hereof and supersedes all previous agreements and representations written or oral with respect to its subject matter.
- 4.3 These terms and conditions shall apply to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Licensee to Trinity and the provisions of these terms and conditions shall prevail unless expressly varied in writing by a director on behalf of Trinity.
- 4.4 No forbearance delay or indulgence by Trinity or the Licensee in enforcing the provisions of these terms and conditions shall prejudice or restrict their rights nor shall any waiver of their respective rights operate as a waiver of any subsequent breach and no right power or remedy herein conferred or reserved for Trinity or the Licensee is exclusive of any other right power or remedy available and each such right power or remedy shall be cumulative.
- 4.5 These terms and conditions and all the provisions hereof and all questions of construction validity and performance hereunder shall be governed by English law and the English courts shall have jurisdiction in any dispute or difference or any other matter or thing arising under or by reason of these conditions.
- 4.6 The headings of clauses in these terms and conditions are included herein for convenience and shall not affect the interpretation or construction of these terms and conditions.

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