

These Terms and Conditions are the standard terms that apply to all Services and Equipment provided by us, Kyonet-IT Ltd, a company registered in England and Wales under number 07975714, of 1 Brisbane House, Corby Gate Business Park, Corby, Northants, NN17 5JG (“the Company/we/us/our”).

1. Definitions and Interpretation

- 1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
 - “**Contract**” means the legally binding agreement formed as detailed in clause 2, which will incorporate and be subject to these Terms and Conditions;
 - “**Client/you/your**” means the business entering into the Contract with us. Where any individual enters into the Contract on behalf of a business, that person confirms they have the authority to contractually bind and enter into the Contract on behalf of that business and the business will be our Client in the context of the Contract;
 - “**Equipment**” means any computer hardware, devices and software to be purchased from us or supported by us, as detailed in the Quotation;
 - “**Quotation**” means the written quotation we will supply, which may be in the form of a Service Level Agreement or otherwise, setting out the Services and/or Equipment we will provide and our fees. Unless otherwise specified, our quotation remains open for acceptance for a period of 30 days and sets out our entire scope of works;
 - “**Services**” means the IT support and any other services to be provided by us to you as set out in our Quotation; and
 - “**Term**” means the term of the Contract and any subsequent renewed term.
- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
 - 1.2.1 “writing/written” includes emails and similar communications;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as may be amended or re-enacted at the relevant time;
 - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
 - 1.2.4 a clause is a reference to a clause of these Terms and Conditions;
 - 1.2.5 a “Party” or the “Parties” refer to the parties to this Contract.
- 1.3 The headings used in these Terms and Conditions are for convenience only and will have no effect on their interpretation.
- 1.4 Words imparting the singular number will include the plural and vice versa. References to persons will include corporations.

2. The Contract

- 2.1 The acceptance of our Quotation, electronically or otherwise, the signing of our Service Level Agreement or the placement of an order, creates a legally binding Contract between you and us and includes the acceptance of these Terms and Conditions, which will apply between us.
- 2.2 No terms or conditions stipulated or referred to by you in any form whatsoever will in any respect vary or add to these Terms and Conditions unless otherwise agreed by us in writing.
- 2.3 You are responsible for the accuracy of any information you submit to us and for ensuring that the Contract reflects your requirements. Our Quotation is based on the information provided to us at the time we prepare it. If any errors or discrepancies become evident, we reserve the right to make adjustments to it.
- 2.4 All our Services will be carried out during our normal business hours of 9am - 5pm, Monday to Friday excluding bank holidays in England, unless otherwise stated in the Quotation. Any works required outside of our normal business hours will incur additional costs.

3. One-off Supply of Services and/or Equipment

- 3.1 You may be required to pay a deposit up front or the entire quoted fee before we can purchase the Equipment and/or arrange a commencement date for the Services. In either case, we will specify this in the Quotation.
- 3.2 If we are supplying Services, we will confirm the programme with you. If you wish to reschedule or cancel the agreed date(s), we require a minimum of 14 days’ notice. If we do not receive the required notice, we reserve the right to charge for the rescheduled or cancelled visit. If we have purchased Equipment prior to the cancellation date, we will charge for this together with any costs and expenses we may have incurred.
- 3.3 If we are required to install Equipment provided by you, then we cannot be held responsible for any faults in the Equipment, or for any delay in its delivery or installation. In the event that we are delayed whilst working on site or the installation date is delayed as a result, the delays and any resulting expenses will be chargeable at our discretion.

4. Ongoing Support Services

- 4.1 The Contract for ongoing support Services will commence on the start date specified and will continue in force for the minimum Term set out in

- our Quotation. After the initial minimum Term, the Contract will be automatically renewed on the same terms and conditions as set out in the Contract (with the exception of the price) on a rolling 3-month basis, unless a written notice to terminate is given by either party in accordance with clause 11.
 - 4.2 Our Quotation will specify the inclusions and exclusions. Please read these carefully. If we agree to provide Services or Equipment that are excluded from the Contract (at our discretion), this will be chargeable.
 - 4.3 We will issue invoices on the first working day of each month throughout the Term of the Contract relating to that month’s support. Payment is to be made in accordance with clause 9.
 - 4.4 We will endeavour to resolve all issues remotely in the first instance, where possible. You will need to keep our monitoring software on your supported devices throughout the Term of the Contract and allow us remote access as necessary.
 - 4.5 Where we have agreed service level response times with you, we will make all reasonable efforts to adhere to these, however, time will not be of the essence in the performance of our Services.
 - 4.6 Where we are providing you with anti-virus and anti-spam protection under the Contract, we will use all reasonable endeavours to ensure it is kept up-to-date. However, we cannot guarantee that such protection will block all viruses or spam and you are required to remain vigilant at all times and to follow cyber-security best practice guidelines.
 - 4.7 We will specify the items of Equipment we have included within our support Services. Please note that in the event of any issues arising, we cannot guarantee that all Equipment can be fixed. If we deem any such Equipment to be beyond economical repair, we will provide you with a quotation to replace it. You can replace it with a suitable alternative from another supplier but please keep us informed in this event. Please note that we may not be able to support Equipment obtained from another supplier if we deem it is not suitable. In that event, we reserve the right to terminate the Contract or exclude the affected Equipment from the scope of the Services.
 - 4.8 If the number of items of Equipment to be included within our support Services changes, you must notify us immediately. If the number increases, we will adjust our pricing within your next monthly invoice, commencing from the date we receive this notification. If we discover the number has increased and you have not notified us of this, we will estimate the number of months to which this increase applies and will adjust our invoice accordingly. If the number decreases and you do not notify us in writing, we will continue to charge for the original agreed number until we receive your notification and no refunds will be offered.
 - 4.9 If we have included for site visits within our Quotation, we cannot be held responsible, and no reduction in fees will be offered, in the event we are unable to attend site due to factors beyond our reasonable control.
 - 4.10 If you physically send any Equipment to us for us to work on, it is your responsibility to safely transport it to us and to back up any data held on it.
 - 4.11 We are entitled to refuse to support Equipment that we reasonably believe has been acquired illegally, used for illegal activity, or otherwise used outside the scope of the agreed licence terms. We cannot be held responsible for any adverse consequences that may arise from the use of Equipment in this way and we reserve the right to terminate the Contract in accordance with clause 11.
- 5. Third Party Hardware and Software**
- 5.1 If we are supplying you with third party software or hardware, this will be subject to the third party’s separate terms and conditions, which we will make available to you. You will be bound by the third party’s terms and conditions in addition to these Terms and Conditions, and they will be incorporated into the Contract by this reference.
 - 5.2 Where the third party imposes a minimum contract term within their agreement, you may only terminate this part of the contract in accordance with their termination provisions.
 - 5.3 We may invoice separately for third party software or hardware in accordance with their payment terms.
 - 5.4 If we are providing you with licences to use third party software, we will provide you with the number of licences you state you require. We cannot be held responsible if the third party carries out an audit and discovers you do not have enough licences. We are also not responsible for notifying you of licence expiry or renewal dates.
- 6. Equipment**
- 6.1 If you purchase new Equipment from us and wish for it to be delivered to you, the delivery will be chargeable.
 - 6.2 Delivery will be deemed to have taken place when the Equipment has been delivered to your chosen delivery address or once you have collected it from our premises.
 - 6.3 If for any reason we are unable to deliver the Equipment at your chosen

delivery address, we will leave a note informing you that the Equipment have been returned to our premises, requesting that you contact us to arrange re-delivery. The re-delivery and storage will be chargeable. We may also, at our discretion, charge for restocking and administration costs.

- 6.4 We may use third party couriers to deliver the Equipment. You are required to inspect the Equipment on delivery or if this is not possible, the delivery note or such other note as appropriate must be marked "not examined". Should the Equipment received be in poor condition on delivery, or simply incorrect, you are required to take photographs of the alleged damage or error and forward these to us within 24 hours of receipt. In this event, we will investigate and will arrange redelivery as soon as reasonably possible. We will be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the provisions of this clause 6.4 are not complied with.
- 6.5 Any Equipment purchased will be subject to the terms of the manufacturer's guarantee or warranty, where provided. Any issues should be raised with the manufacturer directly, in the first instance.

7. Risk and Retention of Title

- 7.1 Risk of damage to or loss of Equipment you have ordered will pass to you at the time it is delivered to you or collected by you or, if you wrongfully fail to take delivery of the Equipment, at the time when we attempted to deliver it.
- 7.2 Notwithstanding clause 7.1, legal and beneficial title of the Equipment will not pass to you until we have received payment in full for the total price of the Equipment, in cleared funds.
- 7.3 Until payment has been made to us for the Equipment in full, and title in the Equipment has passed to you, you will be in possession of the Equipment as bailee for us and you must store it separately and in an appropriate environment, ensuring that it is identifiable as being supplied by us, and you will insure it against all reasonable risks.
- 7.4 We shall be entitled at any time to require you to deliver up to us any Equipment in which we retain title and, if you fail to do so forthwith, to enter upon any premises of yours or any third party's during normal business hours where the Equipment is stored to repossess it.

8. Client's Obligations

- 8.1 You agree, where applicable, to:
- 8.1.1 report faults promptly to us, in any event within 24 hours of discovering the fault;
- 8.1.2 immediately stop the use of any faulty Equipment;
- 8.1.3 provide us with such information and assistance in connection with the Services as we may reasonably require, within sufficient time to enable us to perform the Services in accordance with the Contract;
- 8.1.4 perform your obligations under this Contract in a reasonable and timely manner;
- 8.1.5 not sub-licence our Services to any third party;
- 8.1.6 act in accordance with any and all reasonable instructions issued by us in relation to the Services;
- 8.1.7 consult with us in advance with respect to any new computer hardware, devices and/or software which you intend to procure where these are to be added to the Contract;
- 8.1.8 allow us access to the site if we require it at reasonable times for the purpose of providing the Services;
- 8.1.9 ensure we have access to suitable welfare facilities (including, but not limited to, drinking water, toilets and washing facilities) when on site;
- 8.1.10 ensure that site conditions are maintained in accordance with all Equipment manufacturers' specifications;
- 8.1.11 ensure operators and other staff using the Equipment are properly trained, operate the Equipment within the standards as laid down by us and the manufacturer, and comply with our advice in connection with the use and operation of the Equipment;
- 8.1.12 not allow any person other than us (or a person acting under our instruction) to interfere with, install, modify, repair, relocate or service the Equipment;
- 8.1.13 inform us of any change in your address or contact details;
- 8.1.14 comply at all times with the manufacturers' specifications, including where replacement consumables are required;
- 8.1.15 virus-check all data and material supplied to us;
- 8.1.16 keep secure from third parties any passwords issued by us to you;
- 8.1.17 ensure you follow current cyber-security best practice in accordance with government guidelines, particularly in relation to passwords you use;
- 8.1.18 obtain and maintain all necessary licences, permissions and consents in connection with the Services.
- 8.2 If you fail to comply with the above obligations, we reserve the right to terminate the Contract, exclude any affected Equipment from the scope of the Services and/or charge for costs incurred by us as a result of your failure, at our discretion.

9. Fees and Payment

- 9.1 All invoices are payable strictly within 30 days from the date of invoice, unless with the prior written agreement from a senior manager or director of the Company, in pounds sterling, without set-off, withholding or deduction.
- 9.2 You will be required to reimburse us for any additional Services we may provide at your request together with mileage and reasonable travel expenses to attend site at your request.
- 9.3 We reserve the right to increase our support fees annually under the Contract and in this event, will give you not less than 30 days' prior written notice.
- 9.4 All prices quoted are expressed exclusive of VAT.
- 9.5 Time for payment is of the essence of the Contract. If you fail to make any payment to us in full by the due date then, without prejudice to any other rights which we may have, we will have the right to suspend the Services (including any third party software included in the Contract) and charge interest from the due date until payment is made in full, both before and after judgment, at the rate of 8% per annum above the Bank of England base rate from time to time in force, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. We also reserve the right to charge for any costs we incur in attempting to recover the outstanding debt.

10. Variation and Amendments

- 10.1 If you wish to vary the Services to be provided, please notify us as soon as possible. We will endeavour to make any required changes and any additional costs incurred as a result will be chargeable.
- 10.2 If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the provision of the Services, we will notify you immediately. We will endeavour to keep such changes to a minimum and will seek to offer you arrangements as close to the original as is reasonably possible in the circumstances.
- 10.3 Any agreed variation or amendment will be carried out in accordance with this Contract and any price increase necessitated as a result of an agreed variation or amendment will be payable in accordance with the terms for payment above.

11. Cancellation and Termination

- 11.1 Upon acceptance of the Quotation, you will no longer be entitled to cancel the Contract for the one-off supply of Services and/or Equipment as set out in clause 3, except with our agreement in writing and provided that you indemnify us in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by us as a result of the cancellation.
- 11.2 The Contract for ongoing support Services as set out in clause 4 will continue in force for the minimum Term set out in our Quotation. After the expiry of the initial minimum Term, you may terminate the Contract by giving us no less than 3 months' written notice, which will be effective only at the end of that Term. We may terminate the Contract at any time by giving you no less than 3 months' written notice.
- 11.3 Either Party may terminate the Contract without liability by giving written notice to the other, if the other Party:
- 11.3.1 commits any other breach of any of the provisions of the Contract and, if the breach is capable of remedy, fails to remedy it within 14 days after being given written notice of the breach and requiring it to be remedied;
- 11.3.2 goes into bankruptcy, liquidation or administration either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation), if a receiver is appointed in respect of the whole or any part of its assets, or if the other party ceases, or threatens to cease, to carry on business.
- 11.4 For the purposes of clause 11.3.1, a breach will be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 11.5 Upon termination of the Contract for any reason, any sum owing by either Party to the other under any of the provisions of the Contract will become immediately due and payable.
- 11.6 Termination of the Contract, howsoever arising, will not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.
- ## **12. Liability and Indemnity**
- 12.1 Nothing in the Contract or these Terms and Conditions seeks to limit or exclude our liability in respect of death or personal injury caused by our negligence; fraud or fraudulent misrepresentation; or any other liability which cannot lawfully be excluded or limited.
- 12.2 Except as provided in clause 12.1 above, we will not be liable by reason of any representation, implied warranty, condition or other term, or any duty at

common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the Contract.

- 12.3 All warranties or conditions whether express or implied by law are expressly excluded to the extent permitted by law.
- 12.4 We may provide you with information and advice in connection with the Services. However, we accept no responsibility for any actions taken as a result of such advice or recommendations and we cannot be held liable for any consequences if our professional advice is not taken.
- 12.5 In the event of a breach by us of our express obligations under the Contract, your remedies will be limited to damages, which in any event, will not exceed the total fees paid by you under the Contract in the preceding 12 month period.

13. Intellectual Property

- 13.1 Subject to a written agreement to the contrary, we reserve all intellectual property rights which may subsist in the provision of the Services. We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of such intellectual property rights.
- 13.2 Where third party software is provided, unless otherwise agreed in writing by the parties and provided payment is received by us in accordance with the terms of payment above, we will grant you a non-transferable, non-sub-licensable licence to use the software, subject to the third party's terms and conditions. You acknowledge that you obtain no ownership of any intellectual property rights in respect of any such software and that your use of any such intellectual property rights is conditional on us obtaining permission from the relevant licensor entitling us to licence such rights to you.
- 13.3 You must immediately bring to our attention any infringement or suspected infringement of any of the intellectual property rights licensed to you of which you are aware and will at our request take such action or assist us in taking such action as we may deem appropriate to protect the intellectual property rights.
- 13.4 You warrant that any document or instruction furnished or given by you will not cause us to infringe any letter patent, registered design or trade mark in the execution of our Services and you will indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in settlement of any claim for infringement of any patent, copyright, design, licence, trademark or any intellectual property rights which results from our use of your information.

14. Confidentiality

- 14.1 Each Party undertakes that throughout the duration of the Contract, the Parties may disclose certain confidential information to each other. Both parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under the Contract. Each Party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless required by law or unless so authorised by the other Party in writing.
- 14.2 You acknowledge and agree that in order to provide our Services, we will require access to your Equipment and may need to log in remotely. We cannot be responsible for viewing sensitive documents when carrying out our Services where the relevant user has failed to take steps to secure, password-protect or delete such documents.

15. Relationship of the Parties

- 15.1 Nothing in the Contract will render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.
- 15.2 Nothing in the Contract will constitute or be deemed to constitute a partnership, joint venture, agency or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract.

16. Data Protection

- 16.1 Both parties agree to comply with the provisions of the General Data Protection Regulation 2016, the Data Protection Act 2018, and any subsequent amendments to them.
- 16.2 If you provide us with or allow us access to the personal data of any other person, it is your responsibility to obtain the consent of those persons to pass their data to us, as a third party. We will only process and, if necessary, store such data to perform our obligations under the Contract. We will not use it for any other purpose.
- 16.3 We maintain a data retention procedure and policy for client information. As part of this policy we have limited periods of time for which client data will be held. Please refer to our current procedure for further information.

- 17. **Force Majeure:** Neither Party to the Contract will be liable for any failure or delay in performing their obligations where such failure or delay

results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, pandemic, epidemic, fire, flood, storm, earthquake, act of terrorism or war, governmental action or any other event that is beyond the control of the Party in question.

18. Assignment and Sub-Contracting

- 18.1 You may not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Contract.
- 18.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract, without obtaining your prior consent.

- 19. **Non-Solicitation:** Neither Party shall, during the Term of the Contract and for a period of 2 years from the expiry or termination of the Contract, without the other's prior written consent, appoint in any way or cause to be employed, engaged or appointed an employee, agent, director, consultant or independent contractor of the other. Whilst the above restrictions are considered by the parties to be reasonable in all the circumstances, it is agreed that if, taken together they are adjudged to go beyond what is reasonable in all the circumstances for each Party's protection but would be judged reasonable if part or parts of the wording of them were deleted or its period reduced or an area defined, they shall apply with such words deleted or with such modifications as may be necessary to make it valid and effective.

- 20. **Waiver:** No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

- 21. **Entire Agreement:** The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each Party acknowledges that, in entering into the Contract, it does not rely on any representation, warranty or other provision except as expressly provided in the Contract.

- 22. **Third Party Rights:** No part of the Contract is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

- 23. **Notices:** Notices will be deemed to have been duly received and properly served 24 hours after an email is sent or three working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that it was properly addressed to the address provided, stamped and placed in the post and in the case of an email, that it was sent to the specified email address of the addressee.

- 24. **Severance:** In the event that one or more of the provisions of the Contract is found to be unlawful, invalid or otherwise unenforceable, that/those provision(s) shall be deemed severed from the remainder of the Contract. The remainder of the Contract shall be valid and enforceable.

25. Complaints

- 25.1 We are committed to providing a high quality service to everyone we deal with.
- 25.2 Any complaints should in the first instance be submitted in writing to info@kyonet.com or in writing to: The Service Delivery Manager, Kyonet-IT Ltd, 1 Brisbane House, Corby Gate Business Park, Corby, Northants, NN17 5JG, outlining the exact details of the complaint, the company name, and any order references that the complaint is in relation to.
- 25.3 All complaints will be acknowledged within 3 working days (the days between Christmas and the New Year bank holiday in the UK are excluded as working days).
- 25.4 The outcome of any investigation or enquiry will be responded to within 28 days of the complaint.

26. Law and Jurisdiction

- 26.1 These Terms and Conditions and the Contract between you and us (whether contractual or otherwise) will be governed by, and construed in accordance with, the laws of England and Wales.
- 26.2 Any dispute, controversy, proceedings or claim between you and us relating to the Contract or these Terms and Conditions (whether contractual or otherwise) will be subject to the jurisdiction of the courts of England and Wales.