



# ICT Support Agreement Remote Support Service

## **TERMS AND CONDITIONS OF IT SUPPORT SERVICES AGREEMENT**

Under this Agreement CURVEBALL SOLUTIONS UK LTD shall perform the Service on the Equipment and software as detailed in the Schedules to this Agreement in accordance with the Terms and Conditions herein together with the IT Support Contract and Appendix A which also form a part of these Terms and Conditions.

In this Agreement (which includes the Schedules) the following words and expressions shall where the context so admits is deemed to have the following meanings:

"IT Support Contract" means the contract signed by the Customer and Curveball Solutions UK Ltd to provide the agreed IT Support Services for the agreed contract term stated

"Charges" means the annual amount payable by the Customer for the Service as detailed in the IT Support Contract and subsequent amendments.

"Commencement Date of the Service" means the date upon which the Service shall commence and the date from which the Charges shall apply which are stated in the IT Support Contract.

"Cover Period" unless stated otherwise in the Schedules the cover period within which the Customer may receive Service under this Agreement will be 0800 to 1800 hours Monday to Thursday, Friday 0800 to 1700 excluding such Bank and Public Holidays which operate in the country in which the Customer's Premises are based.

"Customer" means the party as detailed in the IT Support Contract of this Agreement.

"Customer's Premises" means the address or addresses of the place or places, as detailed in the IT Support Contract (and their agreed revisions from time to time), where the Customer operates the Equipment.

"Equipment" means the items of equipment as detailed in the IT Support Contract of this Agreement.

"Response" means the maximum elapsed time from the time at which the fault call is logged by the customer with CURVEBALL SOLUTIONS UK LTD to the time that an engineer commences troubleshooting to resolve the fault either by telephone, remote access or dispatch of a technician to site.

"CURVEBALL SOLUTIONS UK LTD" means the party as detailed in the IT Support Contract of this Agreement.

"Customer" means the 3rd party as detailed in the IT Support Contract of this Agreement.

"Service" means the services described within this Agreement and referred to in the Schedules and form part of these terms and conditions.

## **2 CUSTOMERS OBLIGATIONS**

- 2.1 The Customer shall provide full and free access to the Equipment for the purposes of performing the Service together with such information and assistance as is reasonably required by CURVEBALL SOLUTIONS UK LTD to enable it to perform its obligations under the terms of this contract.

- 2.2 The Customer shall make available to the Support Engineer consumable materials (e.g. paper) that may reasonably be requested in order to perform the diagnostic tests.
- 2.3 The Customer shall be responsible for ensuring the Equipment and any removable magnetic or optical media is cared for and operated in accordance with the manufacturers Recommendations.
- 2.4 Where recommendations from CURVEBALL SOLUTIONS UK LTD to resolve faults and/or improve performance are not followed, CURVEBALL SOLUTIONS UK LTD reserve the right to charge at time and materials to recover cost incurred to resolve/remedy the issue on behalf of the client.
- 2.5 During the period of this Agreement and for a period of twelve months from termination of this Agreement for any reason, the Customer will not employ or offer employment to any person employed by or acting on behalf of CURVEBALL SOLUTIONS UK LTD. If the Customer is in breach of this condition, the Customer recognises that CURVEBALL SOLUTIONS UK LTD will suffer substantial loss and will reimburse CURVEBALL SOLUTIONS UK LTD for such loss.

### **3 THE CHARGES**

- 3.1 The Charges under this Agreement shall be paid by the Customer in pounds sterling 3 months in advance from the Commencement Date of Services. Charges are stated net and therefore shall be subject to the addition of Value Added Tax (VAT) and any other similar taxes which UK Government legislation may apply to this Agreement from time to time.
- 3.2 If any sum due from the Customer shall not be paid within the payment terms agreed herein, then CURVEBALL SOLUTIONS UK LTD shall be entitled, on written notice, to suspend the Service without adjustment to the Charges until such time as any amounts due shall have been paid.
- 3.3 CURVEBALL SOLUTIONS UK LTD may vary all or any of its charges by no more than 15% per annum. Any service and support invoiced after an anniversary will be at the new prevailing rate.

### **4 PERSONNEL**

- 4.1 The Customer will take all reasonable precautions to protect the health and safety of all personnel provided under this Agreement including where practical ensuring the presence of a Customer representative in the area where the Equipment is operating during the performance of the Service.
- 4.2 CURVEBALL SOLUTIONS UK LTD's personnel provided under this Agreement will remain under the management of CURVEBALL SOLUTIONS UK LTD.
- 4.3 CURVEBALL SOLUTIONS UK LTD shall take all reasonable precautions to ensure that its employees shall retain incomplete confidence any information, or

trade secrets of the Customer, its business or its clients of which they shall become aware as a result of performing their duties under this Agreement.

## **5 LIMITATIONS OF THE SERVICE**

- 5.1 The following exclusions apply to the performance of the Service:
- 5.2 Corrective maintenance repairs that are required as a direct consequence of; neglect by the Customer, equipment not subject to this Agreement, accident, failure of air conditioning plant, failure of electrical supply, lightning strike, act of sabotage, fire, flood or any causes other than normal use or as a consequence of unauthorised attempts by persons, other than CURVEBALL SOLUTIONS UK LTD's service engineer, to repair, upgrade, maintain, relocate or modify, the Equipment.
- 5.3 The replacement of batteries including UPS batteries, CRT's for monitors, portable computer screens, printheads, consumables defined as such by the manufacturer and work required due to keyboard and mouse hardware faults.
- 5.4 Supply of consumable operating supplies (including printer character bands), media, toner kits, cleaning and user maintenance kits for laser printers, accessories, or cosmetic finishing of the Equipment.

## **6 TERM OF AGREEMENT**

- 6.1 This Agreement will be effective from the Commencement Date of Services and will continue for the Minimum Term (specified in the contract), after which the provisions of this Agreement will continue to apply for further 01 calendar month at the current Charges until terminated by either party serving not less than 03 calendar month notice in writing to the other party to expire on the anniversary date of the Commencement Date of Services.
- 6.2 Either party may without prejudice to any other rights forthwith terminate this Agreement by notice in writing to the other party if the other party becomes bankrupt, insolvent, or goes into liquidation (other than for the purpose of amalgamation or reconstruction) or makes any composition with its creditors or has a receiver or administrator appointed of the whole or any part of its assets.

## **7 LIMITATION OF LIABILITY**

- 7.1 CURVEBALL SOLUTIONS UK LTD's liability to the Customer in respect of claims for direct physical damage to the CURVEBALL SOLUTIONS UK LTD's liability to the Customer in respect of claims for direct physical damage to the Customer's property at the Customer's Premises (excluding data) arising as a direct result of the negligence of CURVEBALL SOLUTIONS UK LTD'S employees in the performance of this Agreement shall be limited to £1,000,000 for any one event or connected events.

- 7.2 CURVEBALL SOLUTIONS UK LTD's liability to the Customer in respect of claims for direct physical injury to, or death, where such is attributable to the negligence of CURVEBALL SOLUTIONS UK LTD's employees is £1,000,000.
- 7.3 CURVEBALL SOLUTIONS UK LTD shall not be liable for any indirect or consequential losses arising out of its performance under this Agreement (except as provided for in clause 8.2 herein) including but not limited to pure economic loss, anticipated profits, revenues, anticipated savings, loss of clients, goodwill, business opportunities, wasted overheads, loss or corruption of data, software or configurations wherever held or any other losses not flowing directly and naturally from the performance of this Agreement.
- 7.4 Save as otherwise provided in clauses 8.1 and 8.2 above, the total liability of either party under this Agreement for all claims made by the other for loss or damage suffered, however that liability arises, shall be limited to the higher of £1,000,000 or 125% of the annual sum paid or payable under this Agreement.

## **8 BREACH OF AGREEMENT**

- 8.1 If either party shall be in default of its obligations under this Agreement then such default may be considered by the other party to be a Breach of Agreement. Failure to remedy such Breach which has continued for 30 days after receipt of written notice thereof shall entitle the other party to terminate this Agreement summarily and without prejudice to the party's rights and remedies existing at the date of termination. Any outstanding sums due under the Agreement for the remaining term of this contract will become immediately payable.

## **9 GENERAL TERMS**

- 9.1 The terms and conditions of this Agreement shall prevail in the event that there shall be any variance with the terms and conditions of any order submitted by the Customer for the Service.
- 9.2 No person who is not a party to this Agreement may enforce any term of it and the Contracts (Rights of Third Parties) Act 1999 is excluded to the fullest extent permitted by law.
- 9.3 All written notices required under this Agreement shall be served at the address shown in the IT Support Contract (or such other address as notified in writing to the other party) by recorded postal delivery or timed facsimile transmission.
- 9.4 All conditions or warranties of any kind (whether express or implied, statutory or otherwise) concerning the quality or fitness for purpose of the Service are, so far as possible, excluded.
- 9.5 CURVEBALL SOLUTIONS UK LTD or the Customer shall not be liable for any delays in meeting any of their obligations under this Agreement, where such is due to causes beyond their reasonable control.

- 9.6 Neither party shall assign or otherwise transfer this Agreement other than to a member of the same group of companies, whether in whole or in part, without first giving the other party prior written notice of such intended assignment or transfer.
- 9.7 This Agreement sets out the entire agreement between the parties. All prior agreements, statements, understandings, representations (unless made fraudulently) and negotiations, either written or oral, are superseded by this Agreement, from the date of commencement of this agreement stated in the IT Support Contract.
- 9.8 This Agreement shall be governed by the Laws of England and the parties hereto agree to submit to the exclusive jurisdiction of the English Law Courts.

## **REMOTE ACCESS AND TELEPHONE SUPPORT SERVICES**

The Customer may report faults by telephone or by raising a support ticket as directed by CURVEBALL SOLUTIONS UK LTD. Faults reported will be logged. Unless expressly agreed between parties and included in The IT Support Contract, "response" means to commence troubleshooting faults reported by telephone from the time this initial call was logged with CURVEBALL SOLUTIONS UK LTD and acknowledgement of fault diagnosis. Fault diagnosis and resolution may be by remote access, telephone assistance or technicians dispatched to site at CURVEBALL SOLUTIONS UK LTD discretion. Response times are outlined in Appendix A

A detailed description of the service to be provided under this Agreement is contained within the customer contract.

Additional equipment may be added to this Agreement as the Customer may request from time to time provided that such additional equipment is acceptable by CURVEBALL SOLUTIONS UK LTD for inclusion within this Agreement. For the avoidance of doubt the inclusion of additional equipment within this Agreement shall be deemed to be a variation of this Agreement and shall not be deemed to be the creation of a new agreement. The Charges for any additional equipment shall be invoiced pro rata from the date of addition up to the date that the next invoice is due. Thereafter the additional Charges shall be consolidated with the main invoice.

Equipment may be removed from this Agreement as the Customer may request on 60 days prior written notice provided always that such removal of Equipment does not cause the revised Charges under this Agreement following removal of Equipment to fall to less than 75% of the Charges at the Commencement Date of the Service without the consent of CURVEBALL SOLUTIONS UK LTD. The Charges for Equipment removed shall be adjusted pro rata from the date of removal up to the date that the next invoice is due.

CURVEBALL SOLUTIONS UK LTD reserves the right to charge at normal time and material rates where the Customer requests CURVEBALL SOLUTIONS UK LTD to upgrade Equipment from its original specification or where faults in equipment were

present prior to the commencement of this contract. A separate quotation will be supplied to deal with these issues, unless otherwise agreed.

## **SUPPORT**

CURVEBALL SOLUTIONS UK LTD undertakes to provide the Customer with assistance to Operating and Application software, Server, Workstation and Network Hardware queries as referred to in the IT Support Contract by telephone.

CURVEBALL SOLUTIONS UK LTD will also provide Advice and the management of Licences and Warranties where procured from CURVEBALL SOLUTIONS UK LTD.

CURVEBALL SOLUTIONS UK LTD Undertakes to provide the Customer with support on 3rd party hardware and software drivers for such hardware for equipment items with prior written agreements from both parties.

In the event that Recovery Units are provided, the Customer agrees to use all reasonable endeavours to ensure that the circumstances leading to the unforeseen loss of the item of equipment are either rectified as soon as possible and/or that alternative arrangements are made. This would apply whether the loss is to be rectified by way of claim under relevant insurance or not.

Such Recovery Units provided will be at the disposal of the Customer for a primary period of 21 days, during which there will be no further charge for the use of the Recovery Unit. In the event that the Customer requires use over and above the 21 day primary period then, subject to availability confirmation from CURVEBALL SOLUTIONS UK LTD, the Recovery Unit will be subject to a rental of 50% of its Annual Support Charge per week or part thereof.

We would recommend that this service forms part of a current and valid contingency plan and that scheduled tests of the plan are performed on a regular basis and that the Customer ensures that CURVEBALL SOLUTIONS UK LTD is in possession of the latest information and configuration of the equipment to be recovered. Where configurations have changed and these have not been notified to CURVEBALL SOLUTIONS UK LTD or where testing has not been carried out, CURVEBALL SOLUTIONS UK LTD will use all reasonable endeavours to fulfil its obligations under this Agreement but will not be bound by the time constraints herein.

Testing and validating contingency plans must be scheduled with CURVEBALL SOLUTIONS UK LTD and may be charged at normal rates.

Loan equipment or recovery units provided by CURVEBALL SOLUTIONS UK LTD shall always remain the property of CURVEBALL SOLUTIONS UK LTD.

In the event that CURVEBALL SOLUTIONS UK LTD reasonably considers that an item is beyond economic repair then CURVEBALL SOLUTIONS UK LTD will advise the Customer and remove the item from the Schedules whilst offering a refund of the pro rata proportion of the Charges for that item or else replace the item at a price agreed with the Customer either verbally or in writing.

CURVEBALL SOLUTIONS UK LTD reserves the right to charge at normal time and material rates where the Customer requests CURVEBALL SOLUTIONS UK LTD to upgrade Equipment from its original specification or where faults in equipment are not evidenced at the time of the visit by the service engineer.



The customer must install and maintain any communication links deemed required by CURVEBALL SOLUTIONS UK LTD for the function of main and alternate backup routes for remote access to server systems only during the term or this agreement.

CURVEBALL SOLUTIONS UK LTD will monitor daily backup logs for faults and may provide recommendations due to information found in these logs. CURVEBALL SOLUTIONS UK LTD will not be liable for time and associated cost for loss incurred whatsoever due to any systems in direct consequence of a failure to act on these recommendations. CURVEBALL SOLUTIONS UK LTD will provide such recommendations in writing which will be held on record at CURVEBALL SOLUTIONS UK LTD.

CURVEBALL SOLUTIONS UK LTD will restore server data and systems where data for such systems is current and available. CURVEBALL SOLUTIONS UK LTD will not be liable for time and associated costs incurred for disaster recovery where the data is incomplete, out of date, or unavailable due to failure to follow routines specified by CURVEBALL SOLUTIONS UK LTD in this Schedule. CURVEBALL SOLUTIONS UK LTD will not be liable for costs incurred due to loss in continuity of business services where restored data is incomplete, out of date or unavailable.

## Appendix A

### Customer Support Hours and contact details

Your service includes unlimited telephone support on **0151 547 4321** or you may submit email requests for service/support to our dedicated Provisioning and Support Team [support@curveballsolutions.com](mailto:support@curveballsolutions.com)

Core Customer Support Hours (a Core Day) are from 08:00 to 17:30 weekdays, excluding Bank Holidays. We endeavor to answer all incoming phone calls immediately. In the event that all the Service Team members are busy we will ask you to leave a message outlining your issue or alternatively email in a detailed description of the problem to our Provisioning and Support Team ([support@curveballsolutions.com](mailto:support@curveballsolutions.com))

### Issue Response Times

We will discuss any reported issue with you to assess its criticality. We define the following levels:

**Standard Issues (Low Priority)** - an event that does not interfere with a core service such as a request for a repeat invoice or minor service configuration changes.

**Medium Priority Issues (Medium Priority)** – where your use of the service is seriously affected. This could be a single or small number of users unable to utilise a key feature.

**Critical Issues (High Priority)** - typically a major service outage where all users are affected – you must make us aware of any such critical situation by telephone and follow up with an email to [support@curveballsolutions.com](mailto:support@curveballsolutions.com) to avoid delays

Issue Level	Acknowledgement	Initial Response	Target Resolution
Standard	Within 2 hours	Within 1 days	Issue dependent
Medium Priority	Within 1 Core hours	4 Core hours	5 days
Critical	Within 30 minutes	1 hours	4 hours

The final designation of your Issue is determined by Curveball Solutions UK Ltd.. Please note you **must** register critical issues by phone on 0151 547 4321 and via email at [support@curveballsolutions.com](mailto:support@curveballsolutions.com)