

MANAGED IT SUPPORT SERVICE TERMS AND CONDITIONS

also known as a Measured Terms Agreement (MTA)

for

Managed Server and I.T. Infrastructure Support

Tanist Ltd (the 'Company')

Registered Office: Penbury, Pendrift, Blisland, Bodmin, CORNWALL, PL30 4JT

Version: 1.2 (September 2019)

INTRODUCTION

The terms and conditions set out below apply to the Managed IT Support Services proposal as provided by Tanist.

Definitions and Interpretation

Business Day means a normal working day, this excludes Saturdays, Sundays, public and national holidays.

Business Hours means the times during the business day during which the Tanist offices is staffed, e.g 9.00am to 5.30pm

Confidential Information is any information which is designated as confidential by either party or would be likely to prejudice the commercial interests of any person, trade secrets or intellectual property rights of either party.

Our Proposal means the document from Tanist that acts as our quotation, list of services to be offered, any specific points of clarification that relates to the client, the supply of services or the infrastructure covered by the agreement.

SERVICE SPECIFICATION

1.0 Service Includes

- 1.1 Ongoing support of computer hardware (workstations, devices and servers excluding hardware support which it is assumed is provided by a third party and called upon when required within the arrangements set out in this contract), operating systems, mail systems, printing systems, telephone systems, backup systems and assorted software as set out in our proposal.
- 1.2 Assistance with fault detection of licensed third-party software products (e.g. Microsoft Office etc.) and liaison with third-party support organisations to work collaboratively to resolve any issue relating to software or systems provided by the third-party.
- 1.3 Access to means, phone or email, of reporting ICT related issues to Tanist. Support will be provided during normal business hours unless additional support, such as out of normal business hours, has been included in the proposal. The work resulting from any logged request is dealt with in Section 2. Although we attempt to not restrict this service in term of usage, it is subject to a 'Fair Usage Quota', as stated in our proposal, where excessive demands will be discussed with the Client as other delivery methods may be more appropriate.
- 1.4 The provision of advice and assistance to identify suitable IT and Telecomms products in response to a need expressed by the Client. Requests for such assistance will be introduced as a request for support under the procedure outlined in section 4.0.

2.0 Service Delivery

- 2.1 The Service will include regular proactive on-site visits as detailed in our proposal and this will take place on a weekday, to exclude public or national holidays, on a schedule to be agreed.
- 2.2 The Service will be delivered in the main by a team of Technical Support Engineers with the backup of additional Technical Support, Communication and Networking Analysts where necessary from other members of the Tanist ICT Services team.
- 2.3 The Technical staff will acknowledge requests for ICT Support and fault calls, normally within 8 working hours.
- 2.4 When appropriate and if there is a critical urgency to provide a resolution, the Technical staff will resolve faults and satisfy requests by issuing instructions to the Client via telephone, e-mail or via remote support of the Client's systems.
- 2.5 Depending on the urgency of the logged call when an on-site visit, i.e. to the Client's registered office address, is necessary to resolve a fault or satisfy a request, the visit will normally be made within 3 working days of receipt of the logged call. Where the requirement for an on-site visit occurs outside of the next scheduled proactive on-site visit, the customer will be given the option of bringing forward the next visit if it is within 5 working days or paying for an unscheduled on-site visit at the normal daily rate.
- 2.6 Revised or new ICT policies will be recommended where appropriate and directed to the Client for consideration. Where recommendations are to be actioned and require an IT resource to implement any aspect, these must be introduced as requests for additional services as described in paragraph 3.3 below.
- 2.7 The provision of rapid deployment 'swap-out' equipment will be discussed with the customer to facilitate replacement of an item of critical equipment that has become faulty or inoperable for some reason. This service is limited to specific types of 'swap-out' equipment and is by prior agreement only; where said equipment is normally held by Tanist in stock it can be provided to the customer for temporary or permanent replacement. However where said equipment is not a stock Tanist item it will be agreed with the customer for them to purchase said equipment and to store it.
- 2.8 24 hour monitoring of critical system processes (including backup, Internet connectivity, unauthorised access, system failures, email services, anti-virus status and general server health / performance / availability).

3.0 Service Exclusions

- 3.1 The supply or maintenance of any items deemed by the manufacturer to be consumable i.e. ribbons, ink cartridges, CDs/DVDs/BluRays, USB memory devices, toner, drums, fuser units, filters, printheads, mice and other pointing devices, displays, keyboards etc. This list is not exhaustive.
- 3.2 The hardware or physical maintenance of all servers, networking equipment, cabling, workstation hardware and printers although assistance and advice will be made available when requested to assist the Client with any problem situation. Tanist will contact the relevant suppliers and make suitable arrangements for warranty repairs and undertake all work to replace defective parts as part of this agreement.
- 3.3 Requests for support, which fall outside the service specified in section 1.0 above can still be made to Tanist (within the working parameters outlined in Section 2) and will be considered as a request for additional support. The customer will be informed that charges are applicable for resulting work and these charges will be agreed in advance of the work being undertaken.
- 3.4 All project based hardware, cabling, server or large scale software installation which will be agreed and quoted for separately, will remain the property of Tanist until the customer has paid for them in full.
- 3.5 Tanist is not obliged to perform any excluded support services, however if requested by the client the applicable charges will be advised to the client for pre-approval before any work is commenced.

4.0 Call Logging Procedure

- 4.1 All faults or requests for IT support should be logged via e-mail to the Tanist Service Desk (support@tanist.co.uk). Phone call requests for support should be made to 01208 851166 and if outside of normal business hours the call will be forwarded to a telephone answering service which will report the issue to the on-duty IT engineer. The Client in each case should provide a realistic priority for any logged call.
- 4.2 All relevant details about the fault or request must to be communicated to the Tanist Service Desk as appropriate and all requests will be logged so that service delivery can be monitored.
- 4.3 Serious issues, escalations and complaints should be directed at the earliest opportunity to the Tanist Technical Services Director either by phone call or via e-mail.

TERMS AND CONDITIONS

5.0 Costs

- 5.1 The costs for the provision of the Service(s) specified in Section 1.0 and Section 2.0 above for the period of this agreement is as stated under our proposal. This is based upon the server, infrastructure, workstations/printers and telephone handsets being the same number as at the start of this agreement and for there to be no more than a ten percent (10%) increase during the duration of this agreement. Any additions to the Client's IT infrastructure will be reviewed each quarter and the client will be advised of any applicable changes to the costs of this agreement; once accepted by both parties the revised costs will be invoiced to the client from the date of review.
- 5.2 The hourly rate for any on-site work over the stated service will be at a specially discounted fee of £49.00 (excl. VAT) per hour (normal hourly rate is £65.00 + VAT). It is very unusual for additional time to be charged and would only be done so with agreement in advance.
- 5.3 All reasonable expenses incurred by the Tanist technical staff, whilst carrying out any duties as part of this agreement, will be re-charged to the Client at cost, e.g. parking, and mileage will be charged at the rate of 45p per mile. Regular proactive on-site visits as specified in Section 2.0 will not be subject to any mileage charge and the period of on-site time specified in the proposal will commence when the member of Tanist technical staff arrives and will continue until they leave the premises.
- 5.4 All regular charges will be invoiced monthly in advance and payable via standing order in advance. Any additional charges will be invoiced at the end of the month to which they apply and will be payable via company cheque or via BACS and will have a term of 30 days. Support services may be withdrawn or withheld if any payment falls into arrears. Invoices will be addressed to The Accounts Department at the Client's address shown on the front page unless we are otherwise advised. Work undertaken will be itemised to enable monitoring of time spent thereby ensuring time kept within agreed retainer level. Quotes will be submitted for work requested over and above retainer level and a Purchase Order will be required prior to commencement. All costs quoted above exclude VAT which will be charged at the standard rate.

6.0 Personnel

- 6.1 The personnel provided by Tanist will remain under the control of Tanist. Neither Tanist nor the Client shall solicit the services of or employ or otherwise contract for the services of any present or future employee of the other without the consent of the other until one year after the earlier of (a) the termination of such employee's employment or contract, or (b) the termination of this Agreement.
- 6.2 Tanist personnel will make every effort to carry out all duties to meet the requirements and timescales of the Client. Within the control as stated in 6.1, these personnel will always act in accordance with all Client confidentiality and all relevant legislation; e.g. acceptable behaviour, compliant Health & Safety, all copyright laws etc.

7.0 Confidentiality

- 7.1 Each Party will keep and maintain any Confidential Information disclosed to them by the other or learned or acquired by them in the operation of this Agreement in the strictest confidence, unless such information:
 - a) was already in its lawful possession (with full right to disclose) before the other's disclosure of it;
 - b) is or subsequently comes into the public domain without breach of this clause;
 - c) is replicated independently by it or for it by someone without breach of this clause;
 - d) is required to be disclosed by any applicable law, statute or regulation including disclosure required for compliance with the Freedom of Information Act 2000 or The Regulation of Investigatory Powers (RIP) Act 2000.
- 7.2 Confidential Information includes (but is not limited to) financial information, commercial information, technical information, sales and marketing information and trade secrets.
- 7.3 This obligation of confidentiality shall survive termination of this Agreement for whatever cause.

8.0 Data Protection

- 8.1 The provisions shall apply to the processing of Personal Data, carried out for the Data Controller by the Data Processor, and to all Personal Data held by the Data Processor in relation to all such processing.
- 8.2 The Data Processor is only to carry out the Services, and only to process the Personal Data received from the Data Controller:
 - a) for the purposes of those Services and not for any other purpose;
 - b) to the extent and in such a manner as is necessary for those purposes; and
- 8.3 All instructions given by the Data Controller to the Data Processor shall always be in compliance with the General Data Protection Regulation (GDPR) and other applicable laws. The Data Processor shall act only on instructions from the Data Controller unless the Data Processor is required by law to do otherwise (as per Article 29 of the GDPR).
- 8.4 The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer, delete, or otherwise dispose of the Personal Data.
- 8.5 The Data Processor shall transfer all Personal Data that it may hold to the Data Controller on the Data Controller's request in the formats, at the times, and in compliance with the Data Controller's written instructions where reasonable.
- 8.6 Both Parties shall comply always with the GDPR and other applicable laws and shall not perform their obligations under this contract between themselves in such way as to cause either Party to breach any of its applicable obligations under the GDPR.
- 8.7 The Data Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.
- 8.8 The Data Processor agrees to comply with any reasonable measures required by the Data Controller to ensure that its obligations under this Statement are satisfactorily performed in accordance with all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the Information Commissioner's Office (ICO).
- 8.9 The Data Processor shall provide all reasonable assistance (at the Data Controller's cost where applicable) to the Data Controller in complying with its obligations under the GDPR with respect to the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments (where applicable), and in dealings with the ICO.
- 8.10 When processing the Personal Data on behalf of the Data Controller, the Data Processor shall:

- a) process the Personal Data only to the extent, and in such manner, as is necessary to comply with its obligations to the Data Controller or as may be required by law (in which case, the Data Processor shall inform the Data Controller of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
 - b) implement appropriate technical and organisational measures, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure;
 - c) not sub-contract any of its obligations or rights under this Agreement without the prior written consent of the Data Controller (such consent not to be unreasonably withheld);
 - d) if so requested by the Data Controller (and within the timescales required by the Data Controller where reasonable) supply further details of the technical and organisational systems in place to safeguard the security of the Personal Data held and to prevent unauthorised access;
 - e) assist the Data Controller in the fulfilment of a subject data access request;
 - f) make available to the Data Controller all such information as is reasonably required and necessary to demonstrate the Data Processor's compliance with the GDPR; and
 - g) inform the Data Controller immediately if it is asked to do anything that infringes the GDPR or any other applicable data protection legislation.
- 8.11 In the event that the Data Processor appoints a Sub-Processor (with the written consent of the Data Controller), the Data Processor shall enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same obligations as are imposed upon the Data Processor by this Agreement and which shall permit both the Data Processor and the Data Controller to enforce those obligations and ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the GDPR. Such an agreement will include the following mandatory components:
- 1. the subject-matter of the processing
 - 2. the duration of the processing
 - 3. the nature of the processing
 - 4. the purpose of the processing
 - 5. the type of personal data
 - 6. the categories of data subjects
 - 7. the obligations and rights of the controller;
- 8.12 The Data Controller shall be liable for all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Processor and any Sub-Processor arising directly or in connection with:
- a) any non-compliance by the Data Controller with the GDPR or other applicable legislation;
 - b) any Personal Data processing carried out by the Data Processor or Sub-Processor in accordance with instructions given by the Data Controller that infringe the GDPR or other applicable legislation; or
 - c) any breach by the Data Controller of its obligations under this contract.
- 8.13 The Data Controller shall not be entitled to claim back from the Data Processor or Sub-Processor any sums paid in compensation by the Data Controller in respect of any damage to the extent that the Data Controller is liable to indemnify the Data Processor or Sub-Processor.
- 8.14 Nothing in this contract (and this Clause 8) shall relieve either Party of, or otherwise affect, the liability of either Party to any data subject, or for any other breach of that Party's direct obligations under the GDPR. Furthermore, the Data Processor hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.
- 8.15 The Data Processor shall, at the written request of the Data Controller, delete (or otherwise dispose of) the Personal Data or return it to the Data Controller in the format(s) reasonably requested by the Data Controller within a reasonable time after the earlier of the following:
- a) the end of the provision of the Services; or
 - b) the processing of that Personal Data by the Data Processor is no longer required for the performance of the Data Processor's obligations under the Service Agreement.
- 8.16 Following the deletion, disposal, or return of the Personal Data, the Data Processor shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds, unless retention of such copies is required by law, in which case the Data Processor shall inform the Data Controller of such requirement(s) in writing.
- 8.17 All Personal Data to be deleted or disposed of by the Data Processor under this Agreement shall be deleted or disposed of using the following method(s):
- a) Secure deletion or shredding; and/or
 - b) Secure physical destruction of media
- 9.0 Review and reporting**
- 9.1 The Client will be responsible at all times for all ICT policy and procedures. Tanist will, on request, provide relevant consultancy advice to the Client as part of this agreement, where there is an apparent need to change or add any policy or procedures.

10.0 Liability

- 10.1 The Client shall not be liable to The Company for loss or damage suffered by The Company unless due to the negligence or other failure of the Client to perform its obligations under this Contract / Agreement or under the general law; any liability would be limited to a maximum of £10,000 in any single instance.
- 10.1.1 The Company shall not be liable to the Client or to third parties for:
- 10.1.2 Any losses resulting from interruptions or downtime to the Service;
- 10.1.3 Any inability, on the part of the Client, to use the Service;
- 10.1.4 Any damage or loss resulting from the loss of confidentiality caused by the storage of information on the internet
- 10.2 Nothing in this Clause shall exclude the liability of the Company for death or personal injury resulting from the Company's negligence or that of its employees or agents.
- 10.3 Nothing in this Clause or in this Contract / Agreement shall exclude the liability of the Company for fraudulent misrepresentation.

11.0 Warranties and Disclaimer

- 11.1 The Company, its employees, servants or agents will make every reasonable effort to ensure that all information advice and other services (the services) given in relation to this Contract / Agreement shall be accurate. However, the Client accepts that the Company shall have no legal responsibility or liability for any errors or omissions in the services provided and accepts that the Company has no responsibility or liability with regard to the standing of any Firms, Companies or Individuals mentioned in relation to the services provided.
- 11.2 Subject to the provisions of this Contract/Agreement, the Company gives no warranty, express or implied, in connection with the Service(s) obtained as to fitness for purpose, quality, non-infringement or merchantability.
- 11.3 Both parties and the signatories to the Contract / Agreement warrant that they are authorised and permitted to enter into the Contract/Agreement, and have obtained all necessary permissions and approvals.
- 11.4 Both parties warrant and undertake that they are not aware as at the date of the Contract / Agreement of anything within their reasonable control which might or will adversely affect their ability to fulfil the obligations under the Contract/Agreement.

12.0 Indemnity

- 12.1 The Client will fully indemnify the Company against all costs, expenses, liabilities, losses, damages and judgements that the Company may incur or be subject to as a result of any of the following:
- 12.1.1 The Client's misuse of the Service;
- 12.1.2 The Client's breach of this Contract/Agreement;
- 12.1.3 The Client's negligence or other act of default;
- 12.2 The Activities of third parties conducted on the Client's website using facilities such as blogs, forums and chat.
- 12.3 Neither party shall be liable to the other under this Contract / Agreement in contract, tort, or otherwise (including negligence), pre-contract or other representations (other than fraudulent or negligent misrepresentations) or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential or loss whatsoever.
- 12.4 The Client agrees to indemnify the Company against any claims, damages, losses, costs and expenses which the Company may sustain or incur in relation to any content and materials which the Client provides, such indemnity applying in respect of any claims for any breach of applicable law or regulation or any infringement of any intellectual property rights.
- 12.5 The Company agrees to indemnify the Client against any claims, damages, losses, costs and expenses which the Client may sustain or incur in relation to breaches of the Confidentiality and Intellectual Property Rights clauses of this Contract / Agreement committed knowingly by the Company.
- 12.6 Nothing in this Contract / Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

13.0 Force Majeure

- 13.1 Neither the Company nor the Client shall be liable for breaching this Contract / Agreement where that breach results from Force Majeure.
- 13.2 Neither party shall be deemed in default of these T&Cs if prevented from complying with any obligations due to an act or cause not within the reasonable control of the party whose performance is interfered with and which by the exercise of reasonable diligence a Party is unable to prevent. All reasonably available means must be employed the affected Party to restore performance following a Force Majeure event.
- 13.3 If such force majeure occurs, the party affected shall notify the other party in writing as soon, as is practicable.

14.0 Monitoring, Audit and Information

- 14.1 The Client shall provide as soon as possible to The Company or such other interested body as The Company shall from time to time determine, such information as is requested to ensure that this Contract / Agreement is being complied with.

15.0 Notice

- 15.1 Any notice given by either of the parties under this Contract / Agreement shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery or first-class post to the receiving party as set out in this clause.
- 15.2 Any such notice shall be deemed to be effectively served as follows:
- 15.3 In the case of service by pre-paid recorded delivery or first-class post 48 hours after posting; or
- 15.4 In the case of service by email on the next working day

16.0 Termination

- 16.1 This Contract / Agreement may be terminated by either party giving at least 90 days notice in writing without the need to give any reason and in that event neither party shall have any right or rights against the other arising out of, or in consequence of, such termination, provided that the termination shall not affect any prior rights either may have under this Contract / Agreement.
- 16.2 The Company shall have the right to terminate this Contract / Agreement immediately by notice in writing to the Client if: a) The Client is in material breach of any of its obligations under this Contract/Agreement; or b) The Client (if a company) ceases to trade, or is unable to pay its debts as they fall due or has a petition presented or a meeting convened for the purpose of being wound up or enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or an administration order is made in relation to it; or c) The Client shall have a receiver or administrative receiver appointed over all or a substantial part of its assets or distraint is levied over any of its assets.
- 16.3 In the event of a breach by the Client of any term of this Contract/Agreement, The Company may as an alternative to immediate termination of the Contract / Agreement serve notice on the Client requiring the breach to be remedied (if capable of remedy) within such reasonable period specified in the notice, not being longer than 28 days. If the breach has not been remedied before the expiry of the specified period The Company may then terminate this Contract / Agreement forthwith.
- 16.4 Termination of this Contract / Agreement for any reason shall not prejudice any accrued rights or obligations of either party or any rights or obligations which The Company may have in consequence of any breach by the Client of its obligations.

16.5 If any provision of this Contract / Agreement is held to be illegal, void or unenforceable, the legality, validity and enforceability of the remainder of this Contract / Agreement is not to be affected.

17.0 Dispute Escalation

17.1 If any issue between the parties arising out of or in connection with this Contract / Agreement cannot be resolved amicably through ordinary negotiations by appropriate representatives of the parties the issue will be referred in writing by either party to the Managing Directors (or their equivalent) of the parties, who will meet in order to attempt to resolve the matter, within 14 days.

17.2 If either party is of the view that the meeting called under the above clause has failed to resolve the issue, either party, on giving written notice to the other, may declare that the parties are in dispute.

17.3 The failure of either party to insist upon strict performance of any term or condition of this Contract / Agreement, or the failure to exercise any right or remedy to which it is entitled including the right of termination for breach, shall not constitute a waiver thereof.

17.4 Any notice or other communication required to be served under or in connection with this Contract / Agreement shall be in writing and shall be delivered in the case of both The Company or the Client to the address appearing on this Contract/Agreement. Any such notice shall be delivered by hand or sent by recorded delivery and shall conclusively be deemed to have been served at the time of receipt. Notice is not validly served if sent by email.

17.5 Each of the parties warrants its power to enter into this Contract / Agreement and has obtained all necessary approvals to do so.

17.6 Each of the parties agrees that this Contract / Agreement contains the whole Contract / Agreement between the parties and supersedes any prior Contract / Agreement between the parties whether oral or in writing.

17.7 The parties to this Contract / Agreement do not intend that any term of this Contract / Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

18.0 Jurisdiction

18.1 This Contract / Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with the Contract / Agreement or its subject matter or formation (including non-contractual disputes or claims)