

**These Terms and Conditions govern the provision by Bleep 2000 (Computers) Limited whose address is 7 St Saviours Wharf, Mill Street, London SE1 2BE of Software, Hardware and Services.**

## **1. DEFINITIONS**

Unless the context requires otherwise the following words shall have the following meanings in this Agreement:

“Bleep”	Bleep 2000 (Computers) Limited trading as Bleep Computing.
“Contracts”	means agreements entered into between Bleep and the Client for the provision of Software, Hardware or Services.
“Goods”	means computer equipment and other goods provided or to be provided by the Supplier to the Client as set out in a Contract.
“Intellectual Property Rights”	means patents, copyright, database rights, domain names, registered and unregistered designs, know-how, trade secrets and any right to apply for registration of any of the above rights.
“Services”	means any services provided or to be provided by the Supplier to the Client as set out in a Contract.
“Software”	means any software provided or to be provided by the Supplier to the Client as set out in a Contract.
“Third Party Products”	means software, hardware and other goods not manufactured by Bleep but supplied to the Client by Bleep.

## **2. CONTRACT, DELIVERY, THIRD PARTY PRODUCTS and INTELLECTUAL PROPERTY RIGHTS**

- 2.1 All Services and Goods supplied by Bleep to the Client the quotation for which refers to these terms and conditions are subject to the terms set out below and those set out in any Contract entered into between Bleep unless varied by written document signed by a Director of Bleep howsoever the same may be qualified and the placing of an order with Bleep shall be deemed acceptance of these terms and conditions.
- 2.2 In the event of any conflict between this Agreement and any Contract, the Contract shall prevail.
- 2.3 Dates for delivery are estimated dates only and Bleep shall incur no liability for any loss or damage whatsoever as a result of late delivery.
- 2.4 In respect of any Third Party Products supplied by Bleep, unless the Client has entered into a maintenance contract with Bleep which covers the products in question, Bleep shall not have any responsibility or liability for such products and any recourse of the Client in the event of any dissatisfaction with such products will be directly to the manufacturer itself.
- 2.5 Any Software supplied by Bleep is supplied on an "as is" basis.
- 2.6 The Client acknowledges that it obtains no ownership of any Intellectual Property Rights whatsoever by virtue of this Agreement or any Contract entered into between the parties unless such contract specifically provides to the contrary.

### **3. TERMS OF PAYMENT**

- 3.1 Unless otherwise agreed in writing by Bleep payment in full (and without deduction for any reason whatsoever) shall be made to Bleep offices on or before delivery of goods sold hereunder and before work commences on any services to be provided hereunder.
- 3.2 Any sum overdue for payment from the Client to Bleep under any Contract or this Agreement shall bear interest on a daily basis from the date of such failure until payment (both before and after judgement) at an annual rate of 3% above the base rate for the time being in force of Barclays Bank plc.
- 3.3 The Client shall indemnify Bleep against any legal costs and disbursements (on a solicitor and own client basis) which it may incur in recovering any such sum.
- 3.4 Bleep shall have the right at its sole discretion to increase the price of the Hardware or other goods supplied hereunder in the event that the price charged to Bleep by the manufacturers or suppliers of any item are increased between the date hereof and the date of delivery of the Hardware.
- 3.5 Where the Client is paying Bleep an hourly or daily rate based on the provision of Services, those rates are subject to review from time to time and the Client will be charged the current charge rate(s) applicable at the time of supply of the Services.
- 3.6 The "Control by Bleep" software packages contain a payment code which will be asked for by the Software. This payment code may be withheld if payment has not been received by Bleep in full.

### **4. TITLE AND RISK**

- 4.1 Title to any Hardware or other goods sold hereunder shall pass to the Client (or as it shall direct) upon payment in full of all sums due from the Client to Bleep (whether under this Agreement or any Contract or otherwise).
- 4.2 Risk in the hardware or other goods sold hereunder shall pass to the Client on delivery. The Client shall thereafter take all reasonable steps to preserve, maintain and insure in its full value against all the usual risks the hardware or other goods sold hereunder.
- 4.3 Title to any Software shall pass to the Client on delivery. Such title shall consist of a non-exclusive and non-transferable licence to use the same terminable upon 7 days notice in writing by Bleep to the Client in the event that the Client fails to pay all sums due to Bleep (whether under this Agreement or any Contractor otherwise). The Client shall not make or permit to be made any copies of the Software or any part thereof except for its own use for back up or archival purposes only.
- 4.4 If the Client shall purport to sell, license, transfer or otherwise confer any rights in excess of the title or rights it may have from time to time under this Agreement or any Contract, then the full amount of any proceeds thereof (or the right to recover the full amount of any proceeds thereof) shall be held by the Client as trustee for Bleep (without Bleep thereby being obliged to comply with the obligations of the Client to any third party).

## **5. WARRANTY**

- 5.1 If and only if the Client has made payment in full to Bleep therefor, Bleep warrants the Hardware, any other goods sold hereunder and the Software to be free from defects caused by faulty materials or poor workmanship where such defect becomes apparent within a period of 90 days from delivery thereof PROVIDED that:-
- 5.1.1 the Client gives written notice to Bleep within 7 days of any defect becoming apparent with full details thereof;
  - 5.1.2 examination of the items by Bleep shall disclose to its satisfaction that such defects exist and were caused by faulty materials or poor workmanship;
  - 5.1.3 the liability of Bleep hereunder shall be limited to the replacement or repair (at Bleep's option) of the item;
  - 5.1.4 this warranty is contingent on proper use of Hardware, Software or other goods in accordance with any applicable documentation and does not apply to any item which has been misused, modified or had any equipment connected to it otherwise than with the written consent of Bleep or which has had the original identification marks removed or altered. Nor will this warranty apply to any item which has been subjected to any unusual physical or electrical stress. The contingencies and exceptions of this clause shall apply whether or not those matters can be shown to be the cause of or relevant to the particular defect or matter complained of; and
  - 5.1.5 that the Client shall pay Bleep the cost of any test and transport of items in respect of which Bleep does not admit liability hereunder.
- 5.2 Bleep warrants that in providing the Services it will perform with a high degree of professional expertise and skill.
- 5.3 Bleep makes no warranty that the Services or the performance of any Hardware or Software will be uninterrupted or error-free.
- 5.4 The warranty set out in clause 5.1 is exclusive of and in lieu of all other conditions and warranties, either express or implied, including without limitation those relating to satisfactory quality or fitness for purpose.

## **6. DEFAULT**

- 6.1 If the Client shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against him or, if the Client being a Limited company, any resolution or petition to wind-up the Client (other than for the purposes of reconstruction or amalgamation) shall be passed or presented, or if a Receiver of the property undertaking or assets (or any part thereof) of the Client shall be appointed, or if the Client shall commit any breach of its obligations hereunder, then, and in any such case Bleep may forthwith (and without prejudice to any other right or remedy of Bleep):-
- 6.1.1 suspend or determine this Agreement or any Contract or any unfulfilled part

thereof;

6.1.2 stop any goods, including software, in transit; and

6.1.3 recover any goods, including software, from the Client title to which has not passed to the Client.

## **7. TERMINATION**

7.1 Upon termination of this Agreement or any Contract whether by the parties hereunder or by operation of law, the Client shall at its expense forthwith at Bleep's option either destroy, delete or return to Bleep all copies of programs and written material related thereto and confirm in writing to Bleep within seven days of any such deletion or destruction confirm that it has done so. Such termination shall be without prejudice to any pre-existing rights for breach of this Agreement or any Contract and without prejudice to Bleep's remaining and continuing rights under this Agreement or any Contract in relation to liability title and risk.

## **8. LIABILITY**

8.1 Bleep shall not be liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by the Client or for any wasted management time, failure to make anticipated savings or liability of the Client to any third party arising in any way in connection with this Agreement or any Contractor otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.

8.2 Bleep shall not be liable for damages for delay in delivery of Hardware or other items (other than Software) supplied hereunder unless caused by the negligence of Bleep.

8.3 Bleep shall not be liable for damages for delay in delivery of Software howsoever caused.

8.4 Bleep's liability in respect of any defective item of Hardware, Software or any Services supplied shall be limited to twice the value thereof (such value to be deemed to be the sale price of the item or Service from Bleep to the Client).

8.5 No matter how many claims are made and whatever the basis of such claims, Bleep's maximum aggregate liability to the Client under or in connection with this Agreement or any Contract between the parties in respect of any direct loss (or any other loss to the extent that such loss is not excluded by the other provisions of this Agreement or any Contract) whether such claim arises in contract or in tort shall not exceed a sum equal to twice the amount paid by the Client for the relevant items of Hardware, Software or Services.

8.6 If the Client is at risk of economic loss or damage to its business, trade or personally (or if the Client is at risk of causing such loss or damage to others) as a result of malfunction of the Hardware, or Software or any other item supplied hereunder he is advised to insure against such risk. Bleep shall not be liable for any such loss or damage as is described in this sub-paragraph and the Client shall indemnify and keep indemnified Bleep against any claim for such loss or damage.

8.7 Bleep shall not be responsible for non-performance in whole or in part of its

obligations nor under any liability to the Client under this Agreement or any Contract if such non-performance or liability is due to any cause beyond the control of Bleep including, without limitation, Act of God, war, insurrection, riot, civil commotion, Government regulations, embargoes, explosion, strikes, labour disputes, illness, flood, fire, tempest or failure of its subcontractors to honour their obligations to Bleep.

- 8.8 Nothing in this clause shall operate so as to exclude Bleep's liability for death or personal injury arising out of their negligence.
- 8.9 Each foregoing sub-clause of this clause shall constitute a separate and severable agreement. The provisions of this clause shall continue in effect notwithstanding the termination, completion or any other matter which might otherwise cause this Agreement or any Contract to become ineffective.
- 8.10 The provisions of this clause shall operate to protect every servant, agent and subcontractor of Bleep and Bleep shall be deemed to be trustee for itself and such servants, agents and subcontractors so as to make them parties to this Agreement or any Contract for the purposes of this clause only.

## **9. TIME AND PERSONNEL**

- 9.1 Whilst any target dates agreed between the parties are not binding and for guidance purposes only, Bleep shall use its reasonable endeavours to meet such targets.
- 9.2 Without prejudice to the terms of Clause 9.2, if any failure by the Client to adhere to the terms of this Agreement or any Contract leads to any delays, any target dates shall be extended so as to accommodate fully the effects upon the accomplishment of the Services or provision of the Software or Hardware.
- 9.3 To the extent that any delay is directly or indirectly caused by any act or omission of the Client, Bleep shall be entitled to charge the Client for the effects of such delay on a time and materials basis at its then current charging rates.
- 9.4 Neither party will, without the prior written consent of the other party, during the course of the provision of Services or for one year thereafter solicit, make any offer of employment, employ or engage any of the other party's consultants or employees.
- 9.5 In the event of a breach of Clause 9.4, the defaulting party shall pay to the other a sum equal to 6 months' remuneration at the then current rate of the relevant employee or consultant including benefits in kind or if no current rate is available, at the last paid rate of the relevant employee or consultant including benefits in kind. This sum will be payable by way of liquidated damages and is agreed by the parties to represent fair compensation in such event.
- 9.6 The Client shall be liable for the health, security and safety of Bleep's personnel whilst they are on the Client's premises.

## **10. MISCELLANEOUS**

- 10.1 Subject to Clause 10.2, this written Agreement together with the Contracts, constitutes the entire agreement between the parties hereto and neither relied on any representation made by the other party unless such representation is expressly included herein. Nothing in this Clause 10.1 shall relieve either party of liability for

fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance on the same as being fair and reasonable.

- 10.2 No change, alteration or modification to this Agreement or any Contract shall be valid unless in writing and signed by duly authorised representatives of both parties.
- 10.3 If any provision of this Agreement or any Contract or part thereof shall be void for whatever reason, it shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 10.4 The rights and obligations of the Client under this Agreement and any Contract are personal to the Client and the Client undertakes that it shall not, without the prior written consent of Bleep, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.
- 10.5 Bleep reserves the right to sub-contract any of the work required to fulfil its obligations.
- 10.6 Any notice given pursuant hereto or any Contract may be served personally or sent by pre-paid registered letter or recorded delivery to the addresses given hereabove. Such notice shall be deemed to have been duly served upon and received by the addressee, when served personally, at the time of such service or, when posted, 48 hours after the same shall have been put into the post correctly addressed and pre-paid.
- 10.7 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.
- 10.8 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights under any Contract shall not be construed as a waiver of such provision or right thereafter to enforce the same.
- 10.9 Clause headings have been included in this Agreement and each Contract for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.
- 10.10 This Agreement and each Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.